

E6qdtagl

Trial

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

New York, N.Y.

v.

13 Cr. 0115(RA)

JAMES TAGLIAFERRI,

Defendant.

-----x

June 26, 2014
9:44 a.m.

Before:

HON. RONNIE ABRAMS,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York

BY: JASON HARRIS COWLEY

PARVIN DAPHNE MOYNE

Assistant United States Attorneys

- and -

SECURITIES AND EXCHANGE COMMISSION

BY: SAIMA S. AHMED

LAW OFFICES OF SCOTT B. TULMAN

Attorneys for Defendant

BY: SCOTT B. TULMAN

SUSAN PAPANO

ROBERT MARTINEZ

- also present -

Rebecca Baskin, Government Paralegal

Shiyu Pan, Defense Paralegal

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(Trial resumed; jury not present)

(Case called; all sides ready)

THE COURT: So first I just want to advise you that Juror No. 2, Mr. Bonuomo, advised my deputy that he has a medical procedure scheduled for July 22nd, and he wants to know if he should reschedule it, and he said the sooner the better. She indicated that we should be done by then, but that she wanted to check with me to verify.

So I don't know if you want me to tell him to reschedule it or tell him we expect to be done by then.

MR. COWLEY: The government still expects to be done I think well before then, your Honor.

THE COURT: OK. Mr. Tulman.

MR. TULMAN: Yes, I have no reason to --

THE COURT: All right. We are going to tell him we expect to be done by then and that he doesn't need to reschedule if it is not pressing. He is welcome to, but we don't think he needs to do that. OK?

So now I am ready to rule on the motion in limine.

After carefully considering all of the parties' submissions and arguments, I'm prepared to rule on the remaining government motion in limine. I'll just note at the outset that this issue is a close question because it requires the Court to balance the defendant's constitutional right to present a defense against the concern about confusion to the

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jury and prejudice the government may suffer from defendant's last-minute waiver of the attorney-client privilege.

First, I'm not going to give an advice-of-counsel instruction -- and, just to be clear, no one has asked me to -- or permit defendant to argue specifically that he relied on any lawyer's advice. In determining whether a defendant is entitled to an advice-of-counsel instruction, the Second Circuit has held that he must show that he "made complete disclosure to counsel, sought advice as to the legality of his conduct, received advice that his conduct was legal, and relied on that advice." Markowski v. SEC, 34 F.3d at 105; see also United States v. Colasuonno, 697 F.3d at 181. Defendant explained on Tuesday that he was not seeking this instruction because he does not expect the evidence to show that Mr. Tagliaferri sought specific legal advice on any particular legal issue. See pages 14 and 15 of Tuesday's transcript. So I don't want any testimony or argument that Mr. Tagliaferri relied on his attorney's advice -- because, according to Mr. Tulman, Mr. Tagliaferri did not receive any advice about what was required to be disclosed.

I am, however, going to permit the defendant to elicit testimony that attorneys were involved in the transactions (which will in any way event come out on the government's case), and I will permit him to argue that this involvement affected his state of mind, thus bearing on whether he acted

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1 with fraudulent intent. In United States v. King, the Second
2 Circuit concluded that the defendant was not entitled to an
3 advice-of-counsel instruction, but noted in a footnote that he
4 had "suggested the defense in his summation." The Eastern
5 District of Virginia addressed the issue even more directly in
6 United States v. Okun, 2009 WL 414009, at *6-*7 (2009) and held
7 that, quote, "If [the defendant] is not able to furnish
8 sufficient evidence to warrant an instruction on the good faith
9 reliance on counsel defense, any evidence of attorney advice
10 presented might be relevant to the issue of specific intent."
11 Additionally, the D.C. Circuit has explained that "reliance on
12 the advice of counsel need not be a formal defense; it is
13 simply evidence of good faith, a relevant consideration in
14 evaluating a defendant's scienter." See Howard v. SEC, 376
15 F.3d at 1147 (2004). Put more concretely, if he has an
16 evidentiary basis for doing so, the defendant may argue that
17 attorneys who drafted or reviewed documents related to the
18 charged transactions did not inform him of the illegality of
19 his receiving fees or that formal disclosure of them was
20 required, and that the defendant took comfort in the attorney
21 silence. The government is, of course, free to cross-examine
22 Mr. Tagliaferri if he testifies so as to establish that he
23 never sought legal advice on this issue and that he was not in
24 fact acting in good faith.

25 The government points out that a defendant waives

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1 attorney-client privilege by raising the advice-of-counsel
2 defense, and argues that it is prejudiced because
3 Mr. Tagliaferri or his company previously claimed that certain
4 documents were privileged and did not produce them. The
5 defendant first announced that he was waiving the privilege on
6 Tuesday, the first day of jury selection in this trial; that
7 delay inevitably has caused government prejudice in its
8 investigation and preparation for trial. In an attempt to
9 remedy the prejudice caused by this untimely waiver, I'm going
10 to require the defendant to make a reasonable, good faith
11 effort to produce to the government any documents that it was
12 otherwise obligated to produce that were previously withheld on
13 grounds of attorney-client privilege. Although I recognize
14 that counsel is on trial and that the volume of documents in
15 this case is high, I'm going to ask Mr. Tulman to make a
16 diligent search for these documents and report to the Court and
17 the government on his progress by the end of the day on Monday.
18 Depending on what his search uncovers, I may permit the
19 government to recall witnesses, if necessary, and will consider
20 any other requests on this point that the government wishes to
21 make.

22 So to summarize: The defendant may not argue that he
23 relied on explicit advice of counsel, but he may note the
24 involvement of attorneys and how their involvement bore on his
25 intent or lack of intent. In so doing, I intend to ensure that

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1 the evidence is not cumulative in nature and will consider a
2 limiting instruction if the government believes that it may
3 assist in preventing juror confusion. Given the last-minute
4 nature the defendant's waiver, I will expect him to act with
5 good faith in attempting to locate any documents that were
6 previously withheld as privileged but otherwise producible.

7 OK? Do you have other issues you would like to raise?
8 All right.

9 MR. TULMAN: No, your Honor.

10 THE COURT: I think we are waiting for two jurors. We
11 are going to check on them right now.

12 (Pause)

13 THE COURT: Is everyone ready for the jury?

14 All right. We will bring them out.

15 (Continued on next page)

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Opening - Ms. Moyne

1 (Jury present)

2 THE CLERK: All rise.

3 THE COURT: Good morning, everyone.

4 JURORS: Good morning.

5 THE COURT: You may all be seated.

6 We are going to begin with the government's opening
7 statement. Remember, this is not evidence but just a preview
8 of what the parties expect to come.

9 Ms. Moyne.

10 MS. MOYNE: Thank you.

11 Good morning.

12 This is a case about lies, greed, and betrayal. It is
13 about how the defendant, James Tagliaferri, lied to clients who
14 trusted him with their own money. It is about the defendant's
15 scheme to make himself rich with other people's money, to keep
16 the scheme going, and to cover up his fraud before he was found
17 out. All told, the defendant earned millions of dollars from
18 his scheme, while his clients lost tens of millions of dollars.

19 You will learn that for many years, the defendant was
20 paid to invest other people's money for them and to make money
21 for these people, who were his clients. He was known as an
22 investment advisor. When the defendant's clients made money,
23 the defendant made money, because he was entitled to take a
24 small percentage of his clients' money as a fee for himself.
25 And for many years the defendant and his clients did well: He

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Opening - Ms. Moyne

1 by investing their money in safe, solid, investments and
2 watching -- and earning his fees, and his clients' by watching
3 their money grow. But in 2007, the defendant made a decision.
4 His legitimate fees weren't enough. The defendant began
5 investing his clients in companies because the people behind
6 those companies promised to pay the defendant money. Instead
7 of putting his clients' money in safe investments that would
8 benefit them, he put his clients in risky investments that
9 would benefit him. And the defendant made this choice because
10 the people behind these risky investments promised to pay him.
11 And they did -- they paid him lots of money. Payments that the
12 defendant kept secret from his clients. Over the course of
13 about three years, the defendant earned \$3 million in these
14 secret payments, or kickbacks.

15 And the defendant didn't just lie to his clients about
16 the secret payments he received. He lied to them about how his
17 investments were performing. When some clients wanted out of
18 the risky investments, the defendant used other clients' money
19 to pay them back. In other words, he robbed Peter to pay Paul
20 so the scheme could continue and he wouldn't get caught.

21 But the defendant did get caught, and that is why we
22 are here today. Because when the defendant knowingly lied to
23 his clients, when he betrayed them and stole from them, he
24 violated the federal laws that protect people who invest their
25 money with others, and he has been charged with those crimes.

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Opening - Ms. Moyne

1 In this opening statement, I am going to do two
2 things. First, I am going to give you a preview of what I
3 expect the evidence will show, and, second, I am going to
4 describe some of the ways we will prove our case to you.

5 So, what will the evidence show?

6 The defendant was an investment advisor, which means
7 that he was in the business of investing money for people. He
8 was hired by people, his clients, to make decisions for them
9 about how they should invest their money, in stocks and bonds
10 and other assets, to try to make more money.

11 You will learn in this trial that an investment
12 advisor has a special relationship of trust with his clients,
13 kind of like doctors have with patients. As an investment
14 advisor, the defendant was required to be honest with his
15 clients and to make investments for them that was in their best
16 interests. You will learn that, because the defendant's
17 clients trusted him to do just that, they gave him complete
18 control, which meant that the defendant could decide what to
19 buy and sell without asking anyone's permission first.

20 The defendant had a partner and they ran their
21 business from a office in Connecticut, and at any given time he
22 had dozens of clients whose money he was managing. As I
23 mentioned earlier, the defendant made money by earning fees
24 from his clients based on how much money they had. The fees
25 were well known to his clients, and they didn't change over

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Opening - Ms. Moyne

1 time. Each year, because the defendant had so many clients, he
2 earned several hundred thousand dollars in salary.

3 The defendant and his business partner ran a
4 legitimate business for decades, managing money and earning
5 fees from clients. But at a certain point everything changed.
6 The defendant moved the business to the U.S. Virgin Islands, he
7 changed the name of the business, and he began to lie and to
8 cheat and to steal to make more money.

9 The defendant's fraud had three parts or phases -- the
10 kickback scheme, the shell game, and the fake IOU notes. Each
11 was related to the other. I am going to describe each of them
12 briefly for you now, and then I will describe each of them in a
13 little bit more detail and explain how they fit together. At
14 the end, you will see how, as a result of his fraud, the
15 defendant was secretly paid millions of dollars, while his
16 clients lost tens of millions of dollars.

17 First, the kickback scheme.

18 Starting in 2007, the defendant began investing his
19 clients in risky investments that paid him money. These were
20 companies that needed money so desperately that they agreed to
21 give the defendant a portion of every dollar he invested with
22 them. So, for example, for \$1 million of his clients' money
23 that the defendant invested in one of these companies, he was
24 paid \$100,000 on the side. These payments are called kickbacks
25 because the company is kicking back, or giving money back to

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Opening - Ms. Moyne

1 the defendant for investing money with them in the first place.
2 And they were secret because the defendant told his clients
3 exactly the opposite -- the defendant told his clients that he
4 did not get paid by the companies for making investments. In
5 this part of the scheme, the defendant lied to his clients and
6 he stole a portion of their money.

7 The second part of the defendant's fraud is the shell
8 game.

9 Not surprisingly, at a certain point the companies
10 paying the kickbacks could not pay back the money they owed to
11 the defendant's clients. So, to cover up the losses and hide
12 his fraud, the defendant began moving money around so that some
13 clients paid back other clients. In this part of the scheme,
14 the defendant lied to his clients about how their investments
15 were doing, and he used money from some clients to pay other
16 clients, all to keep the scheme alive.

17 Finally, the fake IOU notes.

18 As the defendant struggled to keep his lies from being
19 exposed, he created phony paperwork to cover his tracks and to
20 make his clients look safe, the clients' investments look safe,
21 when in fact they were not. More lies, and more stealing.

22 Now, I'm going to talk to you about each phase of the
23 fraud in more detail, and let's start with the kickbacks.

24 As I mentioned a moment ago, this phase of the fraud
25 began in 2007, when the defendant began entering into

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Opening - Ms. Moyne

1 agreements with people running companies that desperately
2 needed money. In these agreements, which the defendant kept
3 secret from his clients, the defendant agreed to invest his
4 clients' money in the company, and, in return, the company
5 agreed to pay the defendant some money -- usually 10 percent.

6 Let me give you an example. If you turn to your
7 screen, the defendant made it appear that 100 percent of his
8 clients' money went to the company, but he actually took a
9 kickback of 10 percent and his clients were not told about that
10 kickback.

11 Let me tell you about the companies that the defendant
12 decided to invest his clients in during the kickback scheme.
13 Some of these companies were real companies but they had fallen
14 on hard times. They were losing money and needed help even to
15 stay in business. It was not Apple or Coca-Cola or Exxon that
16 was paying kickbacks to the defendant. For example, one of the
17 companies paying kickbacks to the defendant was a horseracing
18 company on Long Island. This company owned some famous horses
19 that had raced in the Kentucky Derby and Belmont, but in 2007
20 the company had problems. It couldn't pay its bills and it
21 desperately needed cash. So the horse racing company and the
22 defendant made a deal -- the defendant loaned his clients'
23 money to the horse racing company for a fee -- a kickback --
24 without telling his clients that he was being paid kickbacks in
25 exchange for the loans.

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Opening - Ms. Moyne

1 You will hear that at the same time -- at about the
2 same time as he received kickbacks from the horseracing
3 company, the defendant also began investing his clients into a
4 group of companies run by two brothers who lived in California.
5 The brothers' companies also had problems. You will learn that
6 some of these companies were not even real companies. They did
7 not provide products or services, and they simply existed on
8 paper. In fact, one of the companies was basically just a bank
9 account that had been set up for the purpose of paying the
10 mortgage on the multimillion dollar mansion of one of the
11 brothers.

12 Like the horseracing companies, the brothers also
13 agreed to pay the defendant kickbacks in exchange for making
14 loans to their companies. And so from 2007 through 2010, the
15 defendant poured tens of millions of dollars of his clients'
16 money into the brothers' companies -- even the mansion and the
17 other companies -- and reaped the benefits of these investments
18 in the form of the secret side payments.

19 Now, you will learn that although the people at the
20 companies knew about the payments, the defendant's clients did
21 not know about them when the defendant made the investments.
22 Getting paid to do business is one thing. Lying to clients
23 about getting paid is another. You will learn that the
24 defendant lied to his clients about the fact that he put their
25 money in companies that paid him kickbacks. And of course he

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Opening - Ms. Moyne

1 didn't tell them, because, as you will learn, they never would
2 have agreed to make the investments in the first place.

3 And you will learn that the defendant knew full well
4 that he was supposed to tell his clients about the kickbacks.
5 You'll see paperwork that he sent to clients in which the
6 defendant represented he was not receiving money from companies
7 in connection with his investment decisions, when in fact he
8 was.

9 And you'll also learn that the defendant told the same
10 lie to the SEC, the government agency that regulates investment
11 advisors. So there will be no question that the defendant knew
12 that he was lying to his clients when he took millions of
13 dollars in kickbacks and he failed to tell them about it.

14 So what happened to the clients' money? Not
15 surprisingly, many of the investments failed -- the horseracing
16 company and the mansion company and many of the brothers' other
17 companies could not pay back the defendant's clients. And, as
18 you would expect, as time went on, the defendant's clients
19 became upset -- they repeatedly asked the defendant where their
20 money was and they demanded to be paid back.

21 What did the defendant do? Did he tell his clients
22 that he lost millions of dollars of their money? Did he tell
23 them that he put them in investments that were so undesirable
24 that he himself would later describe them as the equivalent of
25 garbage? No.

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Opening - Ms. Moyne

1 To cover up his lies about the kickbacks, the
2 defendant began another phase of the fraud -- the shell game.

3 In this part of the scheme, the defendant sold an
4 unprofitable investment from one client to another, not because
5 it was good for the second client, but only to keep the first
6 client from complaining to the defendant or, even worse, going
7 to the government.

8 Let me give you an example and you can see it visually
9 on your screen. The defendant had invested Client 2 -- on the
10 right -- in a company and Client 2 wanted to sell the
11 investment but the investment wasn't doing well. Instead of
12 telling Client 2 the truth, the defendant caused another
13 Client, Client 1, to buy the investment from Client 2. So
14 Client 1's money went to Client 2, and Client 1 got the failing
15 investment in return. It was a swap. And when he did that,
16 the defendant never told Client 1, the one buying the failing
17 investment, that it was only being sold so that Client 2 would
18 not complain.

19 From this example, and others like it, you will learn
20 that the defendant used the shell game -- moving losing
21 investments from one client to another -- to keep the scheme
22 going and to make sure he did not get caught. And in many
23 cases you will learn that the defendant frequently dumped risky
24 investments on the clients who were least likely to question
25 him.

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Opening - Ms. Moyne

1 Not surprisingly, you will learn that the shell game
2 became more and more complicated as time went on because the
3 defendant had to cover up losses for more and more clients. In
4 particular, the defendant schemed with the brothers I talked
5 about earlier to hide the clients' losses in the brothers'
6 companies, like the mansion company.

7 In many cases, the defendant and the brothers covered
8 up losses by using one client's money to buy stock of a company
9 controlled by one of the brothers, and then used the money that
10 was used to pay the stock to pay back another client. What the
11 client buying the stock did not know was that the stock
12 investment was failing.

13 This is how it worked.

14 In this slide, Client 2 (on the bottom) is owed money
15 for an investment in one of the brothers' companies and is
16 asking for her money back. The defendant used Client 1's money
17 to pay Client 2, just as we saw in the other example. In this
18 example, the defendant sent Client 1's money to an account that
19 he controlled, and in exchange Client 1 received shares of
20 stock from the account. Then the defendant sent Client 1's
21 money to Client 2 to pay back Client 2 and to keep her quiet.
22 In this example, as in real life, Client 1 was being cheated
23 because the defendant never told Client 1 that the investment
24 in stock had been made only to make sure there was enough money
25 to pay back Client 2. And Client 1 was cheated in a second

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Opening - Ms. Moyne

1 way, because this Client was stuck with shares of stock which
2 was almost impossible to sell because nobody else wanted it.
3 So in this example Client 1 ends up losing money, which is
4 exactly what happened to many clients in real life who were
5 lied to and cheated by the defendant in the part of the scheme
6 that involved the shell game.

7 Throughout this trial you are going to see many
8 examples of these kinds of shell games, and as I mentioned a
9 moment ago, the lies and the schemes became more and more
10 complicated as the defendant had to cover up more and more
11 losses for his clients.

12 At the end of the trial, there will be no question
13 that the defendant knew that the shell game was a fraud. Among
14 other things, you will hear that the defendant promised each of
15 his clients that he would tell them if he involved one client
16 in a trade with another client -- and you will learn that he
17 never did.

18 Which brings us to the final phase of the defendant's
19 fraud -- the fake IOU notes.

20 This part of the scheme began with another shell game.

21 Looking at the screen, you will see that there are two
22 companies involved, Company 1 and Company 2. The defendant had
23 invested clients in Company 2. Company 2 owed those clients
24 money, but Company 2 couldn't pay. Company 1 owed Company 2
25 money, but Company 1 also didn't have money to pay. So the

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Opening - Ms. Moyne

1 defendant invested clients in Company 1 and directed Company 1
2 to pay it to Company 2, and then Company 2 paid back the
3 defendant's other clients.

4 Just another way of robbing Peter to pay Paul.

5 But this wasn't a shell game like the others. This
6 time, the defendant didn't paper over his fraud. In other
7 schemes, the defendant tried to make sure that he generated
8 paperwork that made it appear as if he had made a secure
9 investment on behalf of his clients. For example, clients
10 received something called a note, which is a piece of paper
11 that functions as an IOU for a loan. But in this shell game,
12 the defendant didn't get any paperwork for the money going out
13 of clients' accounts. He had been so desperate to keep the
14 fraud going and from unraveling that he never completed the
15 deal with Company 1, and he had no paperwork to give his
16 clients. In other words, he put his clients' money -- over \$5
17 million in total -- in Company 1 and he got nothing for them in
18 return.

19 The defendant could not tell his clients that he
20 received nothing in return for their investments. After all,
21 the whole purpose of the shell game was to keep the fraud
22 hidden.

23 So what did the defendant do? Again, the defendant
24 lied. He told his clients that their money was secure, when it
25 was anything but. And this time the lie went further -- this

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Opening - Ms. Moyne

1 time, the defendant created phony paperwork to put in his
2 clients' accounts. The defendant, with the help of his
3 business partner, created dozens of fake IOU notes, and he told
4 his clients that these fake IOUs were real. In this trial, you
5 will see the fake IOU notes, and you will hear how the
6 defendant used them to betray and to cheat his clients. And
7 you will have no doubt that the defendant knowingly lied to his
8 clients when he took their money and gave them nothing but
9 phony paperwork in return.

10 So that, ladies and gentlemen, is an overview of what
11 we expect the evidence will show.

12 As a result of his crimes -- and because of the lies
13 he told his clients and the information he hid from them -- the
14 defendant has been charged in an Indictment with various
15 federal crimes, including securities fraud and investment
16 advisor fraud. At the end of the trial, Judge Abrams will give
17 you detailed instructions on the law and each of these
18 offenses.

19 Now, let me take a few minutes and describe how the
20 government will prove these charges during trial. In short,
21 the evidence will consist primarily of different kinds of
22 witnesses and documents -- witnesses and documents that will
23 establish the defendant's guilt beyond a reasonable doubt.

24 First, you will hear from a number of victim investors
25 who were clients of the defendant. Victims who will tell you

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Opening - Ms. Moyne

1 about the lies that the defendant told them and the critical
2 information he hid from them about the kickbacks, the shell
3 game, and the fake IOU notes.

4 Second, you will hear from two employees of the
5 defendant. They will describe the defendant's business, and
6 how -- after 2007 -- he moved money around as he pleased among
7 client accounts.

8 Third, you will hear from employees of the horseracing
9 company in which the defendant invested his clients. These
10 witnesses will describe the payments that the horseracing
11 company made to the defendant in exchange for his steering
12 investment money to them -- payments which the defendant kept
13 secret from his clients.

14 Fourth, you will hear from an expert witness -- a law
15 professor who teaches at Rutgers University. He will describe
16 the different obligations that investment advisors, like the
17 defendant, are required to satisfy for their clients --
18 obligations that the defendant violated over and over again.

19 You are going to see a lot of documents and emails,
20 many of which were sent by or to the defendant. These
21 documents will make clear what the defendant was really
22 doing -- lying to his clients and enriching himself, instead of
23 protecting their investments, as he promised to do. You'll
24 also see charts that summarize some of the financial records,
25 including the evidence that the defendant received over \$3

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Opening - Ms. Moyne

1 million in kickbacks, while his clients lost tens of millions
2 of dollars.

3 At the end of the case, we will have an opportunity to
4 speak with you again about all of the evidence you are about to
5 see and hear. For now, we ask that you do three things.
6 First, pay close attention to the evidence. This may seem
7 complicated at first, but at the end of the day this is a case
8 about the defendant's lies and his attempts to cover up his
9 lies. Second, follow the Judge's instructions on the law.
10 Finally, remember to use your common sense -- the same common
11 sense you use in your everyday lives that tells you when
12 somebody is lying and when somebody has been honest. If you do
13 these things, you will come to the only conclusion that is
14 consistent with the evidence in this case -- that the defendant
15 is guilty as charged.

16 Thank you.

17 THE COURT: Thank you, Ms. Moyne.

18 Mr. Tulman, would you like to make an opening
19 statement?

20 MR. TULMAN: Yes, your Honor.

21 Good morning, ladies and gentlemen. You will note
22 that her Honor just indicated to me and asked me a question.
23 And the question that she asked was, "Do you want to make an
24 opening statement?" That question was not put to the
25 prosecutor. And the reason why that is so is because it is the

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Opening - Mr. Tulman

1 prosecutor who is required to open, because it is the
2 government that has brought these charges. It is a very
3 significant way of communicating to you from the very outset
4 that Jim Tagliaferri has no burden of proving anything in this
5 case. Right now if the Judge were to tell you to go back in
6 the room, in the jury room, and deliberate and return a
7 verdict, there would be only one verdict that you could return,
8 and that verdict would be "not guilty."

9 And you would have to return that verdict because you
10 have not heard a single shred of evidence in this case. What
11 you have heard is an advocate, a very capable advocate, a
12 person who has done a tremendous amount of work on this case,
13 and a person who may well believe in the cause in which she is
14 a partisan.

15 She has got it wrong. She has got it wrong.

16 Step back for a moment. Think of what you just heard
17 in the opening statement. What Ms. Moyne said to you was that
18 after running a legitimate business for decades --
19 Mr. Tagliaferri is 74 years old. His birthday is on July 13th,
20 1949. The allegation in this case is that Mr. Tagliaferri,
21 after decades of service to his clients, suddenly went to this
22 dark side. And so now I want you to ask a question that you
23 keep in mind throughout this trial. What was the motivation
24 for a 67/68-year-old man, moving towards the end of his
25 career -- not the beginning but the end of his career -- to

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Opening - Mr. Tulman

1 suddenly become the Darth Vader of investment advisors and to
2 turn to this dark side? What the prosecutor suggests as a
3 motive is money, greed. He wanted money. He decided now --
4 now, at this age -- he wants the money. It makes no sense.

5 I am going to talk to you about the evidence in this
6 case, and I am going to use the same charts that the prosecutor
7 used. When the prosecutor opened and put those charts on,
8 there are inflammatory words that are used. "Shell game."
9 "Kickbacks." And so when you listen to it and you see it on
10 the screen there, you would say, well, if the question is was
11 it OK for him to get kickbacks, the answer is, of course, no.

12 It's loaded. It's inflammatory. Part of me wanted to
13 stand up and object and say this is inflammatory. But I don't.
14 Because the purpose of an opening statement is to afford the
15 parties an opportunity to present their case and lay out for
16 you what they think they can prove. And so I don't object. If
17 you have the evidence, if you really think that you've got it,
18 then go ahead. Take a shot. You tell them. You do whatever
19 you want. I'm not scared of those charts, because there is a
20 truth in this case.

21 And the truth in this case, ladies and gentlemen, is
22 the defense in this case. And let me tell you what the defense
23 is in this case. And this is what I want you to keep in mind
24 throughout this entire trial with every witness, with everybody
25 that you hear in this case. The defense in the case is this:

E6qdtagl

Opening - Mr. Tulman

1 Jim Tagliaferri never -- never, never -- intentionally did
2 anything to hurt a single Client. Never did he act in bad
3 faith. And these allegations of shell games and kickbacks and
4 schemes just simply doesn't hold water in the least bit.

5 They don't know this man. Do they know about his
6 lifestyle? Do they know? No. What they said was -- just hung
7 out there -- for decades he ran a legitimate business. For
8 decades he had the same clients that he did fine work for, and
9 there were returns for these people and they were very, very
10 happy with him. But something happened in 2007. The
11 prosecutor really kind of suggests something but doesn't really
12 go there. The prosecutor says he moved to the Virgin Islands.
13 He moved to the Virgin Islands. To suggest that there was
14 something untoward, that maybe that was the start of the whole
15 thing. It's just wrong. It's just wrong.

16 He moved to the Virgin Islands because there were
17 great tax advantages.

18 You don't know this man. I'm going to tell you
19 something about him. Probably one of the brightest people that
20 you're going to meet, as the evidence will show. A very, very
21 sophisticated, intelligent man. And what he lived for, and
22 lives for, were his clients. The money wasn't important to
23 him. What was important to him was to make money for his
24 clients. But he is sophisticated and he knows tax laws and he
25 knows tax rules and he follows these things, and so there were

E6qdtagl

Opening - Mr. Tulman

1 tax advantages to being in the Virgin Islands, as opposed to
2 being in Connecticut, where he had been located for decades.
3 And that's why he moved, the evidence will show, to the Virgin
4 Islands. It is as simple as that.

5 The prosecutor said he moved to the Virgin Islands,
6 but didn't explain how, if at all, that related to anything in
7 this case. The reason: It doesn't.

8 What was happening in 2007 was that this man saw
9 something that a lot of other people did not see. He saw a
10 financial crisis on the horizon. He saw something wrong, as
11 the evidence is going to show and as we all do know. He saw a
12 problem in the world markets and the problem in the United
13 States markets. He saw a problem in the securities and the
14 investments in which he had his clients invested in 2007.

15 We all know what happened in 2008. Not many people
16 saw it coming. Not many people saw major financial houses
17 collapsing, as they did. But he did. And you know why he did?
18 Let me tell you something about who Jim Tagliaferri is.
19 Because I think it's very important for you to know something
20 about the man who you will have the solemn duty of judging.

21 He grew up here in Queens. Went to CCNY, from which
22 he graduated. He took jobs in trading houses, having studied
23 business. Ultimately -- you'll hear a lot more about this --
24 because of his business acumen, he ended up being the head of
25 research equities in a major firm -- bear with me one moment --

E6qdtagl

Opening - Mr. Tulman

1 Lionel Edie. Lionel Edie is, I think, the second or the third
2 largest house in the country. He was the head of the
3 department there. 15 senior research analysts in 15 different
4 sectors -- housing, whatever. He was the head of it all. All
5 the people under him, with everyone bringing reports, and he
6 making decisions.

7 He is a certified financial analyst. Perhaps you will
8 hear testimony about what that is. A JD is easy. Anybody can
9 be a lawyer. You can't be a certified financial analyst. It's
10 a very difficult process. It requires a great deal of ability.
11 Detailed examinations on portfolio analysis, balance sheets,
12 stuff that, frankly, I don't understand despite my client's
13 efforts to try and explain it to me so many times.

14 That's who he is, and that's who he was.

15 So in the year 1983, decades ago, he decided to leave
16 his employer and he went out into his own business, to become
17 an investment advisor on his own. That's what he did.

18 And as the prosecutor has told you, for decades, with
19 his partner -- her name is Pat Cornell, who he worked with for
20 years -- they went into business to become a boutique -- a
21 boutique, small, little firm, literally a mom-and-pop show
22 because they were married, Pat and Jim for many years.

23 (Continued on next page)

E6QBTAG2

Opening - Mr. Tulman

1 BY MR. TULMAN:

2 MR. TULMAN: And they opened up this company with an
3 idea of catering to a very special clientele: High-wealth
4 people. That he would take his skills and his knowledge and
5 his ability and market himself to high-wealth people.

6 Well, why would high-wealth people go to Jim
7 Tagliaferri? Why not go to the major investment advisory firms
8 who have teams of analysts and all of these staffs and as Jim
9 had supervised for all the years? You need a niche. You need
10 to have something a little bit different, and that's what Jim
11 Tagliaferri offered.

12 What Jim Tagliaferri offered was his unique, special
13 business knowledge to go into sectors and to go into areas and
14 to find those stocks and to find those bonds and to find those
15 things where the large houses weren't investing. Anybody can
16 buy IBM, I suppose. Anybody can buy Apple. Anybody can buy
17 the kinds of securities that, if anyone here has securities
18 invested, probably you would have them in. Cisco, whatever
19 they may be.

20 But I think the evidence in this case is going to show
21 that there are some fundamental concepts or terms that are
22 going to be used that might be-- maybe we should become a
23 little more familiar with. The evidence is going to show, I
24 believe, that there's going to be a notion of risk and risk
25 tolerance. Liquidity. How much can you risk? You can risk a

E6QBTAG2

Opening - Mr. Tulman

1 lot more if you've got a lot of money. The return that you
2 seek, the amount of profit that you want to make, the
3 investments in which you can put yourself. How much you can
4 gamble, if you will, depends upon how much money you have to
5 gamble. Common sense.

6 And so what Jim was marketing himself to were
7 high-wealth accounts. And so when we speak about millions of
8 dollars, millions of dollars, it's because the clients had
9 millions and millions of dollars. That's what it was.

10 Now, the defense in this case is simply what I told
11 you. And I would like to go now, if I may, and use the
12 prosecutor's opening charts, if I may.

13 Do you have them so I could use them? I don't have
14 any. Okay.

15 "Kickbacks," "shell game," and "fake IOU notes," these
16 are inflammatory terms. And what I would like to do is to,
17 instead of using these terms, what I would like to do and what
18 I'm going to go to now is to put up something else. Something
19 else which I think is a far more important resource. That
20 resource is called an indictment.

21 I would like you folks not to look at inflammatory
22 words. Quick things to say guilty. I want you to look at what
23 the case is really about. Because what the case is really
24 about is an indictment. I'm not scared that-- the evidence
25 will give me-- it gives us no reason to be concerned.

E6QBTAG2

Opening - Mr. Tulman

1 So I think there's a machine here. And so I think
2 that for you to really be educated about this case and to
3 understand the evidence that I'm going to establish-- when I
4 say "I," of course I mean with the witnesses. I'm as much
5 partisan as the prosecutor. But I think that we should look at
6 the indictment together because it provides kind of a table of
7 contents of where the evidence and -- what the evidence is
8 going to show in this case. Okay? So let's take a look.

9 May I, your Honor?

10 THE COURT: You may.

11 MR. TULMAN: Thank you.

12 Okay. I would like to use this machine if possible.
13 Is there a way to do that?

14 We'll come back to the government's opening and I just
15 want to show it by contrast to the indictment, because it's the
16 indictment that controls, not this. It's reason. It's
17 evidence. Not this.

18 Okay. Now, now that it's on, is there a way to get
19 this off and the indictment on?

20 THE COURT: We all still see the old slides.

21 MR. TULMAN: There it is. Perfect. Thank you very
22 much. Just stay right there and do your thing. Okay.

23 The indictment begins, and the name of this case is,
24 *United States of America v. James Tagliaferri*. And the first
25 count says "Investment advisor fraud." And it says that a

E6QBTAG2

Opening - Mr. Tulman

1 grand jury-- and you'll remember from jury selection her Honor
2 telling you it's a completely different standard of proof in
3 that case. It's just a means in order for a charge to be
4 brought, as her Honor told you. Relevant individuals and
5 entities.

6 First-- let's see. "At all times relevant to this
7 indictment, the defendant provided investment advisory services
8 to clients through various companies that he managed and
9 controlled." Meaning that there was a company in Connecticut,
10 that was TAG, and then there was a company in the Virgin
11 Islands when he moved, for what the evidence will show are
12 completely legitimate reasons, that was TAG VI. Guilty.
13 Guilty of that charge. We did do that.

14 From at least 2007 to at least in or about 2011, Jim
15 Tagliaferri provided investment advisory services through TAG
16 Virgin Islands and its successor, the LLC. Guilty.

17 At all times relevant to the indictment it had its
18 principal place of business in St. Thomas, U.S. Virgin Islands.
19 And TAG was a registered investment advisor with the SEC.
20 Guilty. He was. No question about it, no dispute.

21 From in or about -- or at least the 1980s, 1983 to be
22 precise, to about 2006, he provided these investment services
23 through an entity named Taurus, which was headquartered in
24 Connecticut. That is correct.

25 At all times relevant to this indictment, a company

E6QBTAG2

Opening - Mr. Tulman

1 based in Garden City, New York, was a privately held
2 corporation. And the indictment refers to it as company number
3 one. Company number one is a company that's called
4 International Equine Acquisitions Group, or, for short, IEAH.
5 And you're going to be-- the evidence is going to be coming in
6 fast and furious about IEAH and its history.

7 I'll tell you a little bit about IEAH and what the
8 evidence is going to show about IEAH. IEAH was a company that
9 was formed in 2003, the evidence will show. It was formed in
10 2003 by a fellow named Michael Iavarone. A very important name
11 to remember in this case: Michael Iavarone. And Michael
12 Iavarone was a man who had a vision. He knew horses and he
13 knew about horse racing. And he grew up with horses and he
14 knew about all of these things. And he had an idea of getting
15 a stable of horses and a way of picking winning horses. And I
16 don't know what it is because I don't -- but perhaps the
17 evidence will show what that is, because it's not for me to
18 tell you. It all comes from the witness stand.

19 And the company that Michael Iavarone and another
20 fellow who later joined him, whose name is Richard Schiavo --
21 and I believe in this case you will be hearing from Richard
22 Schiavo as a witness. Richard Schiavo had horses. And there
23 was also another idea that the two of them had. They were
24 located, the company, IEAH, was located in Garden City, New
25 York. Garden City, New York is located in Nassau County, right

E6QBTAG2

Opening - Mr. Tulman

1 by the Queens border, right near a racetrack that's called
2 Belmont. And at Belmont there's a very famous horse race that
3 is run there that is part of a series of horse races which is
4 called the Triple Crown. And that is the World Cup, I guess,
5 of horse racing, to win the Triple Crown. And you may have
6 known recently that there was a horse, California Chrome, and
7 California Chrome almost won the Triple Crown.

8 There was a horse that ran even better than California
9 Chrome. The name of that horse was Big Brown, and it was a
10 horse that his clients own.

11 The scheme, the scheme, the fraud, that was the fraud.
12 The investment that was being made by Jim Tagliaferri was in
13 this company, IEAH, to provide this company with the capital in
14 2007 and 2008 for Michael Iavarone to realize his dream of
15 being able to pick those horses with his system and his
16 formula. And among the horses, because there were many, one of
17 those horses was Big Brown.

18 That was not a fake asset. That was not a shell game.
19 It happened. It was real. His clients were at the winner's
20 circle at the Kentucky Derby holding trophies. That's not a
21 scam. That's not a Bernie Madoff. That's real.

22 Michael Iavarone also had another idea. And that idea
23 was to not only be involved in the purchase of these horses,
24 these Thoroughbred horses, with a formula that could pick-- you
25 don't get the horses as when they foals. You wait until

E6QBTAG2

Opening - Mr. Tulman

1 they've run a race. And then, after they've run a certain
2 number of races and you can pick them, you pay top dollar for
3 them, but you know you've got a winner. And the evidence is
4 going to show more about what that was, this whole idea that he
5 had.

6 But the idea that this man had was an idea that
7 intrigued Jim Tagliaferri, the evidence will show. It
8 intrigued him. Because he didn't like what he was seeing in
9 the economic storm clouds that seemed to be looming. Problems
10 in liquidity, problems with mortgages, problems with too much
11 money in the economy. There was too much free money. He
12 didn't like it. He didn't like it. He wanted to find
13 something alternative and he seized upon this.

14 This man, Iavarone, had an idea. He had another idea.
15 And the other idea he had was that over in Belmont, to not only
16 have an investment in winning horses, because that's just
17 gambling to a large extent, but to establish an equine
18 hospital. A very specialized equine hospital that was geared
19 towards Thoroughbred horse racing. To build that hospital, to
20 do that, required capital. Michael Iavarone had -- well before
21 Jim Tagliaferri -- had investors. Had obtained millions of
22 dollars.

23 But the evidence will show that Jim saw something in
24 that idea, and he spoke with Michael Iavarone and they came to
25 an agreement. Michael Iavarone had the horse racing knowledge.

E6QBTAG2

Opening - Mr. Tulman

1 Richard Schiavo was with him as his right hand. But what Jim
2 Tagliaferri saw, as a certified financial analyst with his vast
3 knowledge of markets and accounting and balance sheets and
4 everything that goes with that, was that these guys didn't know
5 how to run a business. They knew horses, they really had that,
6 but in terms of being able to get capital and get money and to
7 really run something and to really take it to its potential to
8 get that hospital built, they needed capital. They needed
9 structure. They needed organizational and not just Jim
10 Tagliaferri's clients' money, they needed really big money.
11 They needed \$100 million, not \$10 million or \$20 million.

12 And the man who could make that happen, the man who
13 could figure that out, the man who could do the research, the
14 man who was the man who headed senior research analysts was a
15 man who could put something like that together. And this is
16 the beginning of Jim Tagliaferri's undoing. Because he entered
17 into an agreement, the evidence will show, with IEAH. And the
18 agreement, reduced to essentials, was this: You guys don't
19 have the money to pay me for what it is that I can do for you
20 with my expertise. You need capital. Here's what we'll do.
21 We'll have a consulting agreement. I'll get you money. I'll
22 get you my clients' money. You can't pay me, so what we'll do
23 is when I get money invested in your company, I will be able to
24 get money from that and we'll agree upon some kind of
25 percentage that you'll pay to me as a consulting fee and I will

E6QBTAG2

Opening - Mr. Tulman

1 work for you.

2 Now, it sounds a little, Well, wait a minute now.
3 You're taking money from your clients. What are your clients
4 getting? The evidence will show in this case that his clients
5 got exactly what they deserved in this case. He negotiated for
6 them and got them a very good deal. Because what they obtained
7 was as follows, from this sophisticated investment advisor
8 whose life was spent protecting his clients and who never to
9 this day ever sought to do otherwise.

10 Can I remove the indictment for a moment and go back
11 to the opening? Thank you.

12 We're talking about kickbacks. The government has
13 called this kickbacks, this consulting agreement. In writing.
14 In writing. Criminals don't say, Hey, let's go into a criminal
15 contract and put it into an agreement in writing. Was it a
16 mistake? Yes. Yes. Was it a crime? No. It was a mistake.
17 It was a good-faith mistake. Because a kickback, as I
18 understand it from how it's described by Ms. Moyne, is when you
19 go and you're getting a piece of the action and not doing
20 anything for it. This wasn't a kickback. This was a guy who
21 was working very, very hard to try to make something happen.

22 And when the prosecutor in her opening statement said
23 the evidence is going to show that what he did was, is he lied
24 and all this, he wasn't lying. He wasn't lying. He never lied
25 to his clients. He was explaining to his clients what he was

E6QBTAG2

Opening - Mr. Tulman

1 trying to make happen with IEAH. Ultimately it didn't happen.
2 It didn't happen. But not for lack of effort and not for lack
3 of trying on Jim Tagliaferri's part. And the evidence is going
4 to establish that. You will see the work that he did to earn
5 the monies that he obtained.

6 Kickbacks. Let's look at this chart together. It's
7 very simple as the government explained it. Tagliaferri
8 clients, with an arrow just to the right, put in 100 percent.
9 Goes to the company. The company there is IEAH. And then the
10 company gives back 10 percent to Jim Tagliaferri. This is
11 accurate. This is somewhat basically accurate so far as it
12 goes.

13 Here's what's missing. Here's what's missing. What
14 Jim Tagliaferri negotiated for his clients was that in exchange
15 for them making an investment in IEAH, what they received back
16 was this really complicated instrument called a convertible
17 note. A convertible note. And what a convertible note is, or
18 was, the evidence will show, is an instrument. And that
19 instrument says that you're going to get back your money with
20 interest. Right? It's a note, like a promissory note. You
21 put up 100 percent. Let's make it \$100,000. You put up
22 \$100,000; you're going to get a promissory note back for
23 \$100,000 with interest.

24 But it is a convertible note. What does that mean, a
25 convertible note? What a convertible note means, the evidence

E6QBTAG2

Opening - Mr. Tulman

1 will show, is that if this takes off, this investment takes off
2 and this works out as Jim Tagliaferri, the evidence will show,
3 honestly in good faith believed, and that was the reason why he
4 made the investment, if it takes off, then we don't want our
5 money back. We want a piece of the action. We want shares in
6 the company. We can convert the note into shares of this
7 company. Because if the company-- because shares of stock in a
8 company -- the marketplace is a lot more volatile, right?
9 Shares of stock can go up; shares of stock can go down. That's
10 a lot riskier.

11 A note is something which is a secure thing. It's a
12 promissory note. It's a promise to pay back money. It's a
13 certain percentage. This is what you get and that's it. You
14 don't get more. You're not in the action. If it's taking off,
15 if it's profiting, if it's doing well, then we can go into the
16 company and get shares. That was the convertible note.

17 But Jim Tagliaferri was not content with that for his
18 clients because Jim Tagliaferri, the evidence will show, really
19 lived for his clients. The evidence will show he has no
20 children. This was what his life was. He spent decades with
21 these people. And that's why you may see older people come in,
22 because he knows them for 20 years. He was with them when he
23 was in his 40s and now he's here, sitting in this chair, when
24 maybe people are going to come in saying, You ripped me off.
25 For 25 years you didn't rip me off, but now you ripped me off.

E6QBTAG2

Opening - Mr. Tulman

1 You made a lot of money for me for 25 years, but then you lost
2 my money and now I want you to pay for it.

3 And so Jim Tagliaferri makes this investment and does
4 the work. And he says it's not enough to just give me a
5 convertible note. I want more. I want more. I'm greedy, but
6 not greedy for myself. I'm greedy for my clients. What are
7 you using this money for? the evidence will show jim is asking
8 these people. I want to know exactly what you're doing with
9 this money. The evidence will show that Iavarone says, Well, I
10 think that this horse, this particular horse, its name is Benny
11 the Bull. Its name is Kip Deville. Its name is Big Brown.
12 I'm telling you, that is a horse that could make a lot of
13 money.

14 And understand what the evidence is going to show.
15 The money in horses is not just purses, not just that it runs a
16 race and wins the race. The big money in horses is if it wins
17 races, there are breeding rights. They go out and you can go
18 on and it can get paid again and again and again, like a slot
19 machine that just keeps winning every time. That horse goes
20 and mates and then breeds and has another horse and it's a
21 whole industry.

22 Now, some people during voir dire, I remember, said,
23 Well, I don't like gambling and all that stuff. You have to
24 suspend any prejudices and biases. I'm telling you that there
25 is an industry. There are people who do this. There are

E6QBTAG2

Opening - Mr. Tulman

1 legitimate organizations in Kentucky, there are organizations
2 in Australia, in Europe. Everywhere. The Middle East.
3 There's big money in these horses. It is an asset. Like gold
4 is an asset or silver is an asset, horses can be an asset.

5 And so Jim Tagliaferri on behalf of his clients says,
6 What are you using it for? A horse? I want a piece of the
7 horse. I want that. Apart from giving me a note, I want --
8 not for me, I want for my clients that they get a piece of the
9 horse. And the deal is struck.

10 To this day there are people who own these horses,
11 some of these horses, in a company that's called Pegasus. And
12 you'll hear the evidence and you'll hear about this company
13 called Pegasus. Some of these same people who may be
14 testifying in this case still have an interest as fractional
15 shareholders of a horse. They don't like the investment, they
16 don't like what happened, but it's there. A bad investment is
17 not a crime so long as you do it in good faith without any
18 intent to deceive anybody or any intent to defraud anybody.

19 You will see, I believe, in evidence these agreements.
20 What you will see on the face of the agreement is a notation.
21 And what the agreement says, right there on top, is Jim
22 Tagliaferri's receiving a consultant's fee. It's right there
23 in writing.

24 Now, who engages in a scheme to defraud? The evidence
25 will show that it's right there. And these are high-wealth,

E6QBTAG2

Opening - Mr. Tulman

1 sophisticated people who take their statements, the evidence is
2 going to show, and read them. Because the government is right,
3 you will see the e-mails. These people are watching their
4 money and they're looking at their investments and they're
5 following and watching and saying, What's this? What's that?
6 Horses, Jim? You sure? But when the going was good and the
7 Kentucky Derby was being run, the evidence will show, and
8 everybody was there at the winner's circle, it was the good
9 times and Jim was a genius. Now he's a criminal.

10 Now, that's the kickbacks. That's the IEAH story.
11 And I believe the evidence is going to show with respect to
12 that portion of this case, this IEAH portion of this case,
13 resoundingly he's just not guilty. There was no intent to
14 deceive, no intent to do anything of the like.

15 Let's turn, now, back to the indictment. I'm sorry.
16 And forgive me, folks. This is obviously a very important
17 case. There's a lot at stake here, so I just beg your
18 indulgence and bear with me. It's a serious charge. You all
19 know that. The man came into a courtroom sometime ago. The
20 indictment was there. He was asked to enter a plea and he
21 resoundingly-- he said, I am not guilty of this. I am not
22 guilty of ever doing anything to hurt my clients. Not guilty.
23 I'm going to trial. And he's presumed innocent.

24 Now, the next says-- oops, I'm sorry. "At all times
25 relevant to this indictment"-- if you follow, you see where it

E6QBTAG2

Opening - Mr. Tulman

1 says "Garden City"? That's IEAH was number four. I'm going up
2 now. Number five: "At all times relevant to this indictment,
3 a company based in New York, New York was a publicly traded
4 company, company number two." And company number two's shares
5 were quoted on the electronic interdealer quotation system
6 operated by the OTC markets known as the pink sheets.

7 Company number two in this case is a company that is
8 called Fund.com, F-U-N-D dot C-O-M. And Fund.com -- I must
9 tell you the indictment is inaccurate, I think the evidence is
10 going to show. I think the evidence is going to show that
11 there are different types of exchanges. And the exchanges have
12 different kind of levels of respectability, if you will, or
13 requirements. In other words, to be listed as a stock on an
14 exchange, you have to meet certain kinds of requirements.
15 Let's think like baseball: Major leagues, minor leagues,
16 triple A, double A, right? Different levels of ability. If
17 you're a minor league ball player, you're still pretty good,
18 but you're not a major league ball player. I think the major
19 leagues is New York Stock Exchange in terms of requirements,
20 listing requirements, things of that nature.

21 Right up there with that is something that's called
22 the NASDAQ. And when you watch the television news, you'll see
23 they give those things. And then right below that is a
24 NASDAQ-approved trading system that's called the bulletin
25 board. And the evidence will show -- it can't be disputed,

E6QBTAG2

Opening - Mr. Tulman

1 just can't be -- Fund.com was a bulletin board stock. Later
2 on, down the road, it went down to become-- went to the pink
3 sheets. But when Jim Tagliaferri is first involved with
4 Fund.com, it's a bulletin board trading stock.

5 And what the evidence is going to show was that stock
6 was a stock that Jim believed in. He honestly in good faith
7 believed that that stock had tremendous potential. And that it
8 was part of an investment strategy on his part, as it has
9 always been for decades, to find the company that other people
10 weren't looking at. To look at the stocks that he saw because
11 that's what he does. He reads, he studies, he researches, and
12 he comes up with these things. And this was a stock that met
13 with his approval.

14 You'll hear evidence in this case about another stock
15 that was far riskier than this stock. That stock was an
16 Australian company, not even one that was on the New York
17 exchanges, a company that was called White Energy. And you're
18 going to hear evidence about White Energy. It's not in this
19 indictment. You know why? No one's complaining about that
20 one.

21 But everybody's complaining about this one. And
22 you'll see the statements and you'll see the monies that people
23 earned on a stock that nobody would consider buying except
24 maybe for somebody like him. Somebody who gets involved, the
25 evidence will show, and learns the people and does the

E6QBTAG2

Opening - Mr. Tulman

1 research. And just doesn't do it, meets the people who are in
2 these small development companies. Because that's his
3 strategy. The investment strategy for Jim Tagliaferri, what he
4 focused on, was small, developmental-stage companies, companies
5 that were early on, that had a concept, an idea, something that
6 was good, but what they were missing was capital. They needed
7 capital but had an idea.

8 To jump ahead-- oh, it's not on this page. There'll
9 be on the next page a company three, the one that was the other
10 shell game-- no, the-- what was it? The IOU. The fake IOUs or
11 whatever it was. We'll get to it and look at it. That was
12 another company called NDMA, and we'll get to it. But that was
13 a company that was another one that dealt with medical, a thing
14 to work with medical records, how to work with medical records,
15 get them sent. Health care is a big thing in this country, you
16 know, and it's a big, big area. And he saw that one, too.
17 We'll talk about what the evidence is going to show with regard
18 to that.

19 But he did make substantial investments of his clients
20 in this Fund.com. Oh here it is, right next to it. You see
21 this one: "At all times relevant to this indictment, a company
22 based in Berwyn, Pennsylvania was a privately held corporation.
23 It wasn't publicly traded. It's a private corporation. That's
24 the company they were talking about with the fake IOU notes.
25 That company is called NDMA. National Digital Media Analysts?

E6QBTAG2

Opening - Mr. Tulman

1 I don't remember. Something like that. National Medical
2 something. It deals with records and storage with computers
3 and all that and being able to get records so that a doctor can
4 go and pull up a record one way and you can get it sent another
5 way. And it saves a lot of money and it's a whole
6 technology-based way of dealing with medical records.

7 And so that's those two companies. There are two
8 companies that the evidence will show Jim Tagliaferri very,
9 very much believed in. You will see what Jim saw about these
10 companies. You will look at the kinds of information that Jim
11 Tagliaferri was provided with for these companies before he
12 made investments in these companies. And with the benefit of
13 hindsight you may say that was a bad call, because people lost
14 money on it. Well, it's very easy after the fact, in
15 hindsight, to say, Hey, that was a bad call. Bad judgment.
16 Crime. If it made money, he would have been a hero. Bad call,
17 it's a crime. It's a fraud.

18 Now, number seven: "At all times relevant to this
19 indictment, an individual and his brother were involved in a
20 number of business entities that received funds." And here
21 it's associate one and associate one's brother. Those names
22 are Jason Galanis. Jason Galanis is associate one. Jared
23 Galanis is associate one's brother. Jared Galanis is an
24 attorney.

25 Jason Galanis, the evidence will show, is a man who I

E6QBTAG2

Opening - Mr. Tulman

1 believe attended Oxford University studying business. He's
2 much younger than Jim, but I think the evidence will show that
3 he was a very, very articulate, very, very bright, very
4 entrepreneurial guy. A man who, I guess unlike many of us,
5 could speak the financial talk that Jim Tagliaferri speaks and
6 understands.

7 And this man had a lot to talk about. Had a lot of
8 companies. And you're going to hear in the evidence a lot
9 about those companies that he knew and the ideas. One of those
10 companies was company number two. And company number two,
11 Fund.com, was a parent, meaning that it had subsidiaries.
12 Companies that it owned. And you'll hear evidence about the
13 companies that owned, something that was coming up called ETFs,
14 electronic trading. You'll hear evidence about it. I hear
15 it's big.

16 Okay. That's what this was about. The evidence is
17 going to show that a great deal of this case is about what
18 happened when Jim Tagliaferri became involved with Jason
19 Galanis and Jared Galanis and entered into business deals with
20 Jason Galanis and Jared Galanis and loans that were made for
21 capital, for businesses and ideas of what was going to be
22 happening and what was going to be going on. And things that
23 were fed to Jim, reports and analysts, things of the like, that
24 Jim accepted and believed in good faith was there.

25 It turns out that Jim is far from perfect. He may

E6QBTAG2

Opening - Mr. Tulman

1 have a heart of gold, as the evidence I think is going to show,
2 when you hear about things that he's done in his life. He may
3 not care all that much about money for himself, as the evidence
4 will show, but he can't say no. It's very difficult for him to
5 say no to people.

6 And that's a fault, believe it or not. Because when
7 you can't say no, okay, I'll help you out, I'll get something
8 to you, I'll do something for you. But what are we going to do
9 here? And it turns out, as the evidence is going to show, that
10 Jason was not the most honest guy in the world. And a lot of
11 the losses and a lot of what took place here and a lot of the
12 losses that befelled Jim's clients was a result of the actions
13 of these two men. But they're not here today and you're not
14 sitting in judgment of them.

15 Next. The evidence-- I'm going to go up-- in the
16 indictment it says, in the page before, it said that-- okay.
17 "In or about April of 2007, Jason Galanis was judicially barred
18 from serving as an officer or director of a publicly traded
19 company for a period of five years." And that's in there to
20 say, well, I suppose Jim Tagliaferri should have been on
21 notice.

22 The question, of course, is when did Jim Tagliaferri
23 learn about that? When did he know about that? And that's
24 going to be an issue in the case because the evidence is going
25 to show that he met Jason Galanis before this and didn't know

E6QBTAG2

Opening - Mr. Tulman

1 about this at the time.

2 Now, look at number eight: "In or about February of
3 2009," Jim Tagliaferri reported to the SEC that he had over 100
4 clients and approximately \$252 million in client funds under
5 management. It's a lot of money to be entrusted with.

6 Okay. And the evidence will show, the evidence will
7 show, that in the next paragraph it talks about investment
8 management agreements and that Jim would enter into agreements
9 with his clients providing that they pay him a certain fund,
10 and it's something that the prosecutor referred to in her
11 opening and the evidence will show. And you will see these
12 investment management agreements. And when you see those
13 investment management agreements, I think what the evidence
14 will show is that Jim generally charged fees for the services
15 that he provided and it would generally be around 1 percent of
16 the amount of money that he was managing.

17 And so now, with that in mind, think about how much
18 money he would make if that was the amount of money that he had
19 under control, how much he would earn from investment
20 management fees. The government's claim is that wasn't enough
21 for him so he needed to get more money. I think the evidence
22 is going to show it didn't mean a thing to Jim. Did not mean a
23 thing.

24 Now, these gave him-- these management agreements gave
25 Jim tremendous control over his clients. They trusted him

E6QBTAG2

Opening - Mr. Tulman

1 completely, and they trusted him completely because he had been
2 dealing with them, some for decades. They were high-wealth
3 people who specifically went to him because of the investment
4 strategies that he had because the return that he could get for
5 them was better than they could otherwise get. And that's what
6 he did. Okay?

7 And so now I think what I might do is jump ahead for a
8 moment-- oh, here it is. You see paragraph 11? It says
9 "Between 2007 and 2010, Tagliaferri collected at least
10 approximately \$4.3 million in investment advisory fees." Now,
11 do the math based upon the prior. If you did the math and if
12 you said he had 252 million under his control, and if he
13 generally would get a percentage of around 1 percent, as the
14 evidence will show, what would his fees be? And the answer is
15 it would be a lot more than \$4.3 million that he would really
16 have received over that four- or five-year period, right, if
17 you do the math.

18 What happened? How come he didn't get more money than
19 4.3? The answer? Contrary to the government's claim in the
20 opening statement, the evidence is going to show he's not all
21 that concerned about the money. Didn't send out, didn't
22 collect the fees a lot of time. He made enough money. Didn't
23 need the money, and so he didn't collect the fees.

24 When you add them up from the statements and you see
25 what's collected, you'll see that that's the correct number.

E6QBTAG2

Opening - Mr. Tulman

1 He just didn't collect everything that he could have collected
2 because the money wasn't important to him. What was important
3 to him was finding the deal. He wanted to be involved in the
4 business. He wanted-- and you can do the math yourself. It's
5 just in the indictment, which is why I go to the indictment and
6 not to just a simple chart.

7 What would he have been earning a year if he had 252
8 million? It would have been 2.5, right? Multiply it out, ten
9 million. What happened? Where's your-- how come you-- why
10 would you-- the evidence is going to show that it makes no
11 sense for him to be looking to get money from other people when
12 it was there the whole time. Like Dorothy in the Wizard of Oz.
13 Click your heels three times, right? The money was there. Why
14 didn't he just collect the money that you could have collected?
15 Is he that stupid? The evidence is going to show not at all.

16 And now I turn to the paragraph 12, which is really
17 the heart of the case, because it's the three things that the
18 government made the charts up about. Because it says that he
19 engaged in a scheme to defraud, and the next sentence is what
20 this case is all about. Because the government alleges that
21 "In general, rather than making investment decisions based upon
22 the best interests of his clients, as he was legally obligated
23 to do, Tagliaferri instead made investment decisions for his"--
24 next page. They're right on top. Instead of making investment
25 decisions based on his clients, he made-- based on his clients,

E6QBTAG2

Opening - Mr. Tulman

1 he made decisions based on his-- that's why she's here. "He
2 instead made investment decisions for his clients based on his
3 own interests and those of his close associates, including
4 Jason Galanis." And to this, ladies and gentlemen, we say,
5 most emphatically, not guilty. Not guilty. Jim never did
6 anything that he thought would hurt his clients.

7 Now, the government is accurate in one respect. When
8 it turned out that these investments were not working out and
9 people were clamoring and asking, Jim, do something. What's
10 going on? What's going on? He did have to do some explaining
11 and talking and try to figure out what he's going to do right
12 now, when it turns out that the people that he trusted had
13 betrayed him and the money that he had put there.

14 Jim is not a man who can say no, the evidence is going
15 to suggest, and he did not want to tell these people, that he
16 had known some for decades, We've got a problem. I've got a
17 problem here. But that's not what this case is all about.
18 They'll say he lied, he covered up, he did this, he did that.
19 He was in a jam not of his own making and he had to figure out
20 what he could do to try to make things right. How could he
21 make things right?

22 The evidence is going to show that there were some
23 clients and certain investments called notes, that we spoke
24 about before, like the IEAH convertible notes. Right? There's
25 a note. And you have a note and it pays a certain interest

E6QBTAG2

Opening - Mr. Tulman

1 rate. And that's a more secure investment than a stock. And
2 so he had many of his clients in these notes. And these notes
3 that he had put his clients into, many of them, were notes
4 which he had obtained from the Galanises. And it turned out
5 that the Galanises, with all their smooth talk and all their
6 legalese, or whatever else they did, were not honest.

7 When the time came to pay on these notes, Jim, can you
8 get us an extension? Jim, this is what we're going to do.
9 We're going to do this, we're going to do that. And you're
10 going to watch and read from the evidence the e-mails and the
11 exchanges as Jim comes to learn more and more that these guys
12 may not be above board. What did he do? Okay. And what the
13 evidence is going to do, is going to show in this case, is that
14 he tried to do the right thing by all of his clients.

15 And so now let me show you the next government chart
16 which they claim is one of the crimes in this case, one of the
17 aspects, one of the parts of the scheme to defraud.

18 Back to the opening statement, if I may.

19 THE COURT: What would you like?

20 MR. TULMAN: The opening statement. It's going to
21 come back up. And I apologize, folks, but this is a serious
22 responsibility for the government and for the defense, of
23 course. And so we've been waiting a long time for this and so
24 I'm just doing what I have to do here.

25 Okay. The government calls this another shell game.

E6QBTAG2

Opening - Mr. Tulman

1 Another shell game. Let me tell you what this is about.

2 You'll see, in looking at this, that there's stock that goes to
3 client one, money goes to a Tagliaferri-controlled account, and
4 then there appears to be money going to client number two. You
5 see that?

6 There's a problem with the equation, really. And you
7 may think it looks bad for me, or for Mr. Tagliaferri, but
8 let's just make this accurate. There should be another arrow
9 here and there should be a lot more in this chart. The arrow
10 that's missing is why is client two getting money? On its
11 face, this chart doesn't make sense. Okay? Because it's not
12 going to be consistent with what the evidence is going to show
13 at trial. Why is client two getting money? What's this about?

14 Here's the answer. What happened was as follows:
15 Client two in these situations would have purchased a note, a
16 promissory note or some kind of note that was supposed to pay
17 interest. And because these were high-wealth people who didn't
18 want just a regular return like ordinary people with-- you
19 know, you go to the bank and you buy a CD or something like
20 that which returns, you know-- it's secure, but a lower
21 interest rate. They wanted high interest. They wanted 13
22 percent, 14 percent interest, right, because they could risk
23 the money because they had the money to risk.

24 And so these people, clients two, were purchasing
25 notes with a specific interest rate back. And where they were

E6QBTAG2

Opening - Mr. Tulman

1 purchasing the notes from were entities that were, in fact,
2 Galanis-related entities. These were notes that were related
3 to the Galanises. Jim Tagliaferri, the evidence is going to
4 show, trusted them, did business with them, and thought that
5 because of the promise, because of that which they communicated
6 to him, because of the people that they seemed to be associated
7 with in the business world and over in Europe and in Australia
8 and the sheik down in the Middle East, who not only had-- and
9 Asia. Because of all of these contacts, he said, these are
10 money people. This could pay off. This is going to do well.
11 Okay, I'll get money to you. I'll get you into notes.

12 And so, really, there should be money-- there should
13 be money going the other way, but not to a Tagliaferri-
14 controlled account. It's not Tagliaferri. It's Galanis. The
15 money went to notes for the Galanises, you see. And then what
16 happened was the notes came due. It's called mature. A note
17 matures. There's a date when the note is supposed to be paid,
18 and the notes weren't being paid.

19 And then the people who looked at their statements
20 would say to their investment advisor, Mr. Tagliaferri, Hey,
21 Jim, what's going on? I have this note. What happened?
22 Sometimes he would extend-- the notes would be extended, and
23 that means that you get more time to pay the note, the evidence
24 will show. And in exchange for doing that, in exchange for
25 getting more time to pay back a note, you get what's called

E6QBTAG2

Opening - Mr. Tulman

1 forebearance, which means they'll give you something in return,
2 like money or something. Capital, stocks, whatever. But you
3 get something to forbear. We'll pay you all the interest now
4 or things of that nature.

5 And these are complicated business transactions, as
6 the government indicated, and you'll get a lot more of this as
7 time goes on. And I know, hearing my opening, you're saying
8 are you sure we're going to end this case by the middle of
9 July? I don't know if Mr. Tulman is going to finish by the end
10 of July, but I will.

11 And so what happens is these people want their money
12 paid back on the notes. Jim Tagliaferri, the evidence will
13 show, was a firm believer in this stock called Fund.com.
14 Remember the one before that we referred to, right? That
15 stock, Fund.com? The Galanises were linked to Fund.com, but it
16 wasn't just the Galanises. Unlike a private company, this was
17 a publicly traded company. The SEC is involved. It's on an
18 exchange. There are things that are being filed, as the
19 evidence will show, called 8-Ks and 10-Qs and reports and
20 things that are tangible.

21 Now, if those things are fraudulent, if those things
22 are not honest, well, then, Jim Tagliaferri's being defrauded
23 as is anybody else who is investing in Fund.com. But what he
24 did was he believed, as the evidence will show, honestly and in
25 good faith that Fund.com was a good stock. So what he did was

E6QBTAG2

Opening - Mr. Tulman

1 is he said to the Galanises, Listen, you've got to pay my
2 people on these notes. You got me involved in these notes. My
3 people are entitled to not only their payments, I want their
4 interest. I want full payment on these notes. I'll sue you.
5 I'll do something.

6 And so they would make deals. And here's what
7 happened. The Galanises had a substantial amount of this
8 Fund.com stock, which Jim Tagliaferri believed in. And so they
9 said, Listen, we'll get you stock. We'll give you the stock.
10 Take the stock. We'll get money. We can pay back notes. You
11 follow it?

12 Jim believes that it's in the best interests of client
13 number one to get stock, and he certainly wants to see client
14 number two get their money back with interest. With interest.
15 Because Jim Tagliaferri can't say no. He's not going to tell
16 people, listen, there's a problem with these investments that I
17 made on your behalf. These guys are not paying the note.
18 Instead, he's on the phone, he's working and doing and
19 e-mailing and all this, you guys, forbearance, this and that.
20 Because he's going to get them their money. And that's what he
21 does.

22 Now, what's in it for Jim? In the first chart that
23 you saw before, they talked about kickbacks. Kickbacks. He's
24 getting something. What's here? Absolutely nothing is the
25 answer. Absolutely nothing except that client two -- it's not

E6QBTAG2

Opening - Mr. Tulman

1 a shell game. Client number one is getting stock. Client
2 number two is getting their money in their account with
3 interest. Exactly what it was that was the purpose of the
4 investment. We say not guilty.

5 Go back one.

6 The government calls this a shell game. On its face,
7 I don't see a shell game. When I say "I," of course, I don't
8 think the evidence is going to show that there's any kind of
9 shell game. I'm not important in this whole thing. I'm just
10 commenting on a chart, right. On its face, what does it look
11 like? Money goes to client two; client number one gets an
12 investment, right. Because sometimes some people may say I
13 need money. I need to be liquid, right. I need something for
14 whatever it is. I'm taking a vacation. I don't know. I'm
15 paying for something. I need money. I'll get you money. You
16 have a security, you have an investment. This client will get
17 the investment; you can get the money.

18 It's not a shell game. It's something, a concept,
19 that I think we'll learn about as the evidence develops in this
20 case. The evidence is going to show you that there's a concept
21 in the trading world that's called cross-trading. It's legal.
22 It's not a shell game.

23 Finally, there's this one, the fake IOU notes. In the
24 first chart you saw, they said, okay, we can show that Jim
25 Tagliaferri received money. They called it a kickback. The

E6QBTAG2

Opening - Mr. Tulman

1 evidence will show quite the contrary. That is, he made a
2 mistake. I'll tell you what the mistake was, by the way.
3 There's no dispute in this case. As an investment advisor, you
4 are a fiduciary. You have an obligation. That's just not the
5 ordinary obligation of someone who's selling a car. You go to
6 buy a car -- I mean, I guess there are lemon laws. I don't
7 know. But that's just the marketplace. When you're entrusted
8 with somebody's money, you have a very special obligation and
9 that's called a fiduciary relationship. And you're entrusted
10 and you have a higher duty.

11 He was negligent. He may even have been reckless.
12 But he never intended to deceive or defraud anybody, and that
13 is what this case is all about. Because a fiduciary, the
14 evidence will show, has a special obligation to a client that
15 if you are receiving a fee, if you are receiving a fee, you
16 should say something. You should report it. Not just put it
17 on the face of the document. I think you may have something
18 more that's required.

19 Well, Jim knows these people for 20 years. He sits
20 their living room, sits in their kitchens, talks to them. And
21 because he has no bad heart, no evil intent in his mind and he
22 doesn't intend to do anything wrong, he doesn't look to cover
23 his tracks. He's not looking to put something in the small
24 print that you send out to your clients and things like that.

25 There'll be times when he does do that, and you'll see

E6QBTAG2

Opening - Mr. Tulman

1 evidence of that as well, when he even does make disclosures to
2 his clients of things, such as when it appears on the face of
3 documents and all. But I think the evidence is going to show
4 that he's not perfect. He made mistakes. That's why we're
5 here. That's why we're here. Because he made these kinds of
6 mistakes.

7 This was a mistake. This fake IOU notes was a
8 mistake. What the evidence is going to show is as follows.
9 Company number -- oh, there it is. NDMA. UMS and NDMA. That
10 was a company-- bear with me one second. National Digital
11 Medical Archives. That's its name, National Digital Medical
12 Archives. That was the name of the company. Health care is a
13 very big thing, as we all know. That was a company that was
14 doing business with another company called CSI. And I won't go
15 to ask my client again. Whatever it is, it's computers.
16 Something with computers that developed the technology. And
17 that was another company that Jim believed in and had invested
18 his clients in before NDMA.

19 And it turned out that NDMA, which had used CSI --
20 owed money, and a lot of money, to CSI because this is a small,
21 developmental company with what Jim Tagliaferri, the evidence
22 will show, believed to be a great idea. And it was on the
23 verge, based upon the projections, based upon certain contracts
24 that were almost in place with major, major entities,
25 hospitals, whatever it may be, and you'll get the evidence as

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Opening - Mr. Tulman

1 it comes in, right. And once those things came in, NDMA was
2 going to take off. But it needed capital. And it also needed
3 capital to pay CSI.

4 And so what the evidence will show is that Jim
5 Tagliaferri puts money of his clients into NDMA, but says to
6 NDMA, I'm going to get you this money; I want notes. And when
7 the money is sent over to NDMA, it will say, as the evidence
8 will show, for -- UMS is the parent of NDMA. See "UMS" on the
9 top there? UMS is a parent, which means it's like -- it owns
10 NDMA. "For purchase of UMS notes," that's what it says.
11 That's what it was intended to be, the evidence will show.

12 And NDMA gets the money and Jim says, I'm sending you
13 the money so you can get by and meet your obligations. And, by
14 the way, the major obligation I'm concerned about is CSI,
15 because my clients are in that, and I want to see you make sure
16 that my clients-- that this company is being taken care of.
17 And I'm going to give you the money that you need to survive so
18 that you can then take off yourself and we'll go from there.
19 And maybe we'll have a similar kind of a deal with a
20 convertible note similar to who? IEAH, right? A similar type
21 deal like that.

22 But this company, NDMA, the evidence is going to show,
23 there's going to be a fellow called Turnbull, who says, Jim,
24 great, great. We'll get everything worked out. Get us the--
25 we really need the money now. We really need the money now, as

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Opening - Mr. Tulman

1 people will do when they want money from you. And because, as
2 the evidence will show, Jim is a guy who it's hard to say no,
3 he starts wiring the money over to NDMA because it needs it.
4 Because it needs it.

5 Now, in this scheme to defraud, let me tell you how
6 much money Jim got for that, because you should know. Zero.
7 Nothing. Nothing at all.

8 Months pass. NDMA has gotten its money and it ends up
9 being like \$5 million that it gets. You'll see the e-mails,
10 you'll see the evidence of these people: You've got to do it.
11 Jim, we need this now. We've got that obligation, we got that
12 obligation. We need money for this. We need money for that.

13 He's got no skin in that game. He's not getting
14 anything out of it. He's trying to do a deal to make this
15 company go. Because if this company goes, he sees a great
16 potential for his clients. Not for him, for his clients to get
17 into this whole thing.

18 What you'll learn is that they don't put-- they don't
19 get him the notes. That which he relied upon when he sent the
20 money, there's a different story. And you'll see the evidence
21 with Jim Tagliaferri communicating to these guys and saying,
22 You know what? You're asking me for more money. I wanted
23 projections. I wanted more data from you. You know, you're
24 talking and talking. I need to see more right now. I'm
25 getting nervous about this whole thing. And you'll see the

E6QBTAG2

Opening - Mr. Tulman

1 exchanges back and forth where they're trying to get
2 information. I want to see your financials, because that's
3 what a CFA does. They analyze balance sheets and look at all
4 the things to try to -- and they're not responding and they're
5 not getting to him.

6 And now the year is coming to an end in 2009 and he
7 says I'm getting nervous. I'm getting nervous. What happened
8 to this money? And so he wants to protect his clients. He
9 hasn't gotten a note yet. He knows they need more money. He
10 says to them, the evidence will show, Listen, you want more
11 money; I need my notes. I want my security before I'm going to
12 do anything.

13 And now the people-- there's a fellow, his name is
14 Mark Brasso, B-r-a-s-s-o. Brasso. I always get it wrong. And
15 this fellow meets with Jim Tagliaferri in December of 2009 and
16 they talk and discuss. And at the end of that meeting, Jim
17 Tagliaferri, the evidence will show, is very confident that
18 things are now going to work out and that he's going to be
19 getting those notes from NDMA. Why? Because he needed the
20 money. And he was not going to send them any more money unless
21 they were going to get him the notes that he was demanding that
22 he receive.

23 And so what he does is he prepares these sub notes. A
24 sub note. What a sub note is, is let's say Jim sent over a
25 million dollars. He has these assets that he controls and he

E6QBTAG2

Opening - Mr. Tulman

1 gives the company a million dollars. From the million dollars
2 he doesn't take one client and take a million dollars. He'll
3 take, let's say, ten different clients and take \$100,000 from
4 ten different clients and say, okay, I'm taking from this
5 client, this client, this client, down the list, put that
6 together, and then sends NDMA a million dollars. Right?

7 So there would be one note that would be prepared for
8 the million dollars, but that's one note that's just to Jim's
9 company, to TAG. And so, in other words, to evidence for each
10 individual client that they had given \$100,000, and he wanted
11 to document the fact that these clients had this \$100,000
12 investment, he prepared these notes. You have \$100,000, you
13 have \$100,000. So it was a sub note predicated on the
14 existence of the million dollar note. Got it? So a million
15 dollars broken up into ten, so there were these sub notes.

16 And what he caused to be done, the evidence will show,
17 is that he had these sub notes put into the clients' files
18 fully intending and expecting that the master note was going to
19 be coming. And the evidence will show, you will see -- you
20 will see that at the same time that that is taking place, that
21 all the e-mail correspondence and exchanges are here's the
22 final draft of the master note that's going because attorneys
23 are preparing these things and to get it over, to get this
24 done.

25 What happens? In 2010 this company with Turnbull and

E6QBTAG2

Opening - Mr. Tulman

1 another fellow named Keller say to Jim Tagliaferri, By the way,
2 Jim, you're not getting any notes. That's not our deal. Our
3 deal is you're a shareholder. You're a limited partner. Your
4 clients are now limited partners in our company, to which
5 Tagliaferri is just shocked and says, That was never the deal.
6 If you're a limited partner, there has to be an agreement.
7 There has to be what's called a subscription agreement, where
8 you subscribe and you become a limited partner. We have no
9 such agreement. What are you talking about? Where's the
10 notes?

11 By that time in 2010, what the evidence will show is
12 that the problems with the Galanises are developing, and all of
13 a sudden a lot of the Fund.com stock that he had his clients
14 invested in was starting to go down and people are starting to
15 clamor, to call for their money. Where's my money, Jim? You
16 made me a lot of money on this Fund.com last year. You told me
17 I'm going to make more money. Where's my money? Where's my
18 money? Where's my money? I want my return, Jim.

19 IEAH, not because of Jim Tagliaferri but because of
20 what the evidence will show is complete utter mismanagement by
21 Mike Iavarone, who blows millions of dollars in the equine
22 hospital that then goes under, loses the money. And so the
23 people and all of the money that had been invested so
24 promisingly in Kentucky Derby winners and the like all of a
25 sudden is not there.

E6QBTAG2

Opening - Mr. Tulman

1 And so the people with IEAH are saying, Where's my
2 money, Jim? Hey, I don't want to be in this IEAH anymore.
3 Sell it. Get me my money. I don't want to lose any money.
4 That's not what you are about. You're an investment advisor.
5 We're not supposed to lose money with you. We're only supposed
6 to make money with you. All we've ever been doing with you is
7 making money. Now you're losing money. We're going to sue
8 you. We're going-- and that's the clamoring that's now
9 beginning.

10 And then people say, What about these notes with NDMA?
11 They go to the bank and say, What's this sub note about? They
12 contact the company. The company says, oh, we have no note
13 with this. There's no note. You're a limited partner.

14 And we're indicted. And we're indicted. And we're
15 here. And we're begging you to listen to the evidence in this
16 case. We're begging you to stand -- as the government wants
17 you to do, so much more does Jim Tagliaferri want you to listen
18 to the evidence in that case-- in this case. And when you
19 listen to the evidence in this case, when you listen to the
20 evidence and you hear from Richard Schiavo from IEAH-- and, you
21 see, I think we're hearing from him. Because, again, I don't
22 know. The burden of proof is on the government. They can
23 prove the case any which way they want. So I don't know for
24 sure who they're calling. I'm surmising. Somebody from NDMA
25 should be here. Maybe there won't be. I don't know. I assume

E6QBTAG2

Opening - Mr. Tulman

1 that there will be. You have to prove a case somehow.

2 When any witness takes this witness stand, whether
3 it's a disgruntled investor who says this man in 2010, I was
4 asking for my money and he was telling me a whole bunch of
5 stories, ask yourselves questions: How did you do before?
6 When somebody from NDMA comes in, ask yourself, from the
7 evidence in this case, What happened to the notes, mister?
8 Whatever happened to the notes?

9 I don't think that Jason Galanis is showing up here.
10 I don't think that Jared Galanis is showing up here. They
11 might. I don't know. It's not my call. It's the government's
12 call. They prove the case however they will prove their case.
13 So I don't know if you'll have an opportunity to listen to
14 them, to hear the evidence and testimony of what they did, what
15 they were telling Jim. You'll see e-mails. The government may
16 seek to do that, to look at all the e-mail exchanges and the
17 text messages.

18 Ask yourself, from the evidence in this case, whether
19 you can really find guilt beyond a reasonable doubt when
20 virtually every single critical witness who was involved in
21 these things doesn't show up in a courtroom.

22 MS. MOYNE: Objection.

23 MR. TULMAN: Because the evidence will show--

24 MS. MOYNE: Objection.

25 THE COURT: One second.

E6QBTAG2

Opening - Mr. Tulman

1 MR. TULMAN: I'm sorry.

2 THE COURT: Overruled. I can instruct the jury at the
3 end of the trial. Go on.

4 MR. TULMAN: Because a case is based not only on
5 evidence, but the lack of evidence. And if at the end of the
6 day, ladies and gentlemen, you entertain a reasonable doubt
7 because the government has failed to adduce the evidence that
8 you need to make a decision, you do your duty.

9 Ask yourself at the end of this case, ladies and
10 gentlemen, has the government really proven or disproven beyond
11 a reasonable doubt that Jim was not acting in good faith? The
12 evidence is going to show that this man never in his life
13 intended to hurt any of his clients. Every step of the way,
14 could he have honestly believed in good faith that Jason
15 Galanis was a real reputable businessman who had access to the
16 funds and the deals that he was speaking of? Ask yourself,
17 could Jim Tagliaferri have been honestly mistaken when he puts
18 money into a company that goes and wins the-- is a runner-up
19 for the highest honor in the Thoroughbred racing industry
20 called the Eclipse Award and they're nominated because of
21 their great work in the horses, and particularly Big Brown?
22 This horse, the equivalent of the Academy Award for
23 Thoroughbred racing industry, this is not made up. This is not
24 a shell game. This is not fake. This happened. This is real.
25 It's a real story. Big Brown is alive today, I think in

E6QBTAG2

Opening - Mr. Tulman

1 Australia, but I think Big Brown was being moved to New York or
2 something like that.

3 Could he have been mistaken honestly, as you'll hear
4 the evidence in this case, about what his obligations were as a
5 fiduciary with respect to his clients when you don't have the
6 bad heart and you don't have the evil intent and you know that
7 you're trying to do the right thing by your client, but you're
8 just not good with your administrative and all that? That's
9 left to others. Could he have honestly made mistakes, albeit
10 negligently, foolishly? A one-man shop, essentially, without
11 big departments for compliance and all those things that the
12 SEC demands, with all the paperwork and all that stuff. You're
13 just running around and on your phone and reading e-mails and
14 doing deals. Could he have honestly made mistakes here? The
15 evidence is going to show resoundingly he did. He did. That's
16 why we're here.

17 But at the end of the day, ladies and gentlemen, I
18 think what the evidence is going to show is that if you put
19 aside any bias and prejudice, you view this dispassionately,
20 you make a determination based upon the evidence and the lack
21 of evidence in this case, and if you hold the government
22 responsible for proving Jim Tagliaferri's guilt beyond a
23 reasonable doubt, if you do that, there is no question in this
24 case that you will return a verdict of not guilty.

25 Thank you.

E6QBTAG2

Opening - Mr. Tulman

1 THE COURT: Thank you.

2 Ladies and gentlemen, what we're going to do now is
3 take our morning break. I'm going to ask you, just like I'm
4 going to ask you at the beginning of all breaks, to keep an
5 open mind and not to discuss the case. Thank you.

6 (Jury excused)

7 THE COURT: All right. I'll see you back here at
8 noon.

9 (Recess)

10 (Continued on next page)

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E6QBTAG2

Opening - Mr. Tulman

1 (In open court; jury not present)

2 MS. MOYNE: Your Honor, we wanted to raise two issues.

3 THE COURT: Okay.

4 MS. MOYNE: Sorry. First, the government request that
5 the Court give an instruction now about witnesses being
6 equally-- uncalled witnesses being equally available to both
7 sides. Defense counsel in his opening said he doesn't know if
8 Jason Galanis is coming here or if Jared Galanis is coming
9 here. It's not his call, it's the government's call. And
10 obviously the law is that both parties can call witnesses.

11 What we would propose is that the Court instruct the
12 jury now that while the defendant doesn't have a burden to call
13 witnesses or present any evidences, that the uncalled witnesses
14 are equally available to both sides and either side could
15 choose to call a witness.

16 THE COURT: Mr. Tulman, do you have any objection to
17 that? I mean, I'm going to give the instruction at the end in
18 any event.

19 MR. TULMAN: No. If your Honor believes that I
20 overstepped in my opening the boundary by making that comment,
21 then I have no objection to the instruction.

22 THE COURT: Okay. All right. Why don't you hand up
23 the language. I'm sure it's the standard language.

24 MS. MOYNE: All right. I might write it so you can
25 read it more thoroughly.

E6QBTAG2

Opening - Mr. Tulman

1 MR. TULMAN: In English.

2 THE COURT: It can't be worse than my handwriting.

3 MS. MOYNE: And the second issue is Mr. Tulman
4 referred to in his opening that there were drafts of notes
5 being exchanged, referring to the NDMA notes that were
6 allegedly going to be drafted. And we've never -- as far as we
7 know, we have no such documents of any drafts of notes being
8 created or exchanged of NDMA notes. And so we're obviously
9 going to move to preclude that evidence. I just wanted to
10 front it with the Court.

11 I don't know if this was something that was previously
12 withheld on privilege grounds, but I suspect not because
13 Mr. Tulman said that he hasn't seen the documents that had
14 previously been withheld on privilege grounds. And unless he
15 can point me to the production of these notes existing, we're
16 going to move to preclude that evidence.

17 THE COURT: Do you anticipate that such evidence will
18 be introduced?

19 MR. TULMAN: I believe in Carol Cureton -- who is a
20 witness in this case. I believe in Carol Cureton's documents
21 there would be drafts of a master note. I believe it was in
22 Carol Cureton's --

23 THE COURT: I don't think we need to keep the jury
24 waiting. Why don't you look and see if it's something that's
25 going to come out in the government's case with the

E6QBTAG2

Opening - Mr. Tulman

1 government's witnesses. I think I can take this up later.

2 Bring in the jury.

3 Do you want to hand up that language, Ms. Moyne?

4 MR. TULMAN: So long as the instruction also indicates
5 that the burden of proof is on the government. That
6 instruction is acceptable to the defense.

7 (Continued on next page)

E6QBTAG2

Opening - Mr. Tulman

1 (In open court; jury present)

2 THE COURT: You may be seated. Thank you.

3 That concludes opening statements. I do just want to
4 give you one brief instruction on the law. Although the burden
5 of proof remains at all times with the government and the
6 defendant is under no obligation whatsoever to call any
7 witnesses or present any evidence, you should also know that
8 uncalled witnesses are equally available to both sides and
9 either side can call an uncalled witness. But I'll give you
10 more instructions on the law at the end of the case after
11 you've heard the evidence.

12 Now we're going to move on to the portion of the trial
13 where the government is permitted to call witnesses and
14 introduce evidence.

15 MR. COWLEY: Thank you, your Honor. We begin by
16 reading a stipulation relating to records into evidence. Your
17 Honor, what I'm about to read is marked for identification as
18 Government's Exhibit 3010. It's entitled "Trial Stipulation"
19 and it reads as follows:

20 "It is hereby stipulated and agreed by and among the
21 United States of America, by Preet Bharara, United States
22 Attorney for the Southern District of New York, Jason Cowley,
23 Parvin Moyne, Assistant United States Attorneys, and Saima
24 Ahmed, Special Assistant United States Attorney, of counsel,
25 and James Tagliaferri, the defendant, by and with the consent

E6QBTAG2

Opening - Mr. Tulman

1 of his attorney, Scott Tulman."

2 The stipulation reads as follows:

3 "1. The documents set forth on Appendix A, which
4 contain Bates stamps beginning with the prefix 'SS' or 'SSB,'
5 were produced by State Street Bank and constitute true and
6 accurate documents kept and maintained by State Street Bank in
7 the normal course of business.

8 "2. That the documents set forth in Appendix B and
9 Appendix F, which contain Bates stamps beginning with the
10 prefix 'TAG,' were produced by TAG Virgin Islands, LLC and
11 constitute true and accurate copies of documents kept and
12 maintained by TAG in the normal course of business.

13 "3. That the documents set forth in Appendix C, which
14 contain Bates stamps beginning with the prefix 'IEAH,' were
15 produced by International Equine Acquisitions Holdings,
16 Incorporated, referred to as 'IEAH,' and constitute true and
17 accurate copies of documents kept and maintained by IEAH in the
18 normal course of business.

19 "4. That the documents set forth in Appendix D, which
20 contain Bates stamps beginning with the prefix 'Sentinel,' were
21 produced by the Sentinel Law Firm and constitute true and
22 accurate copies of documents kept and maintained by the
23 Sentinel Law Firm in the normal course of business.

24 "5. That the documents set forth in Appendix E, which
25 contain Bates stamps beginning with the prefix 'PCL,' were

E6QBTAG2

Opening - Mr. Tulman

1 produced by Patricia Cornell and constitute true and accurate
2 copies of documents kempt and maintained by her."

3 And, finally, the stipulation reads: "It is further
4 stipulated and agreed by and among the parties that this
5 stipulation and the Government exhibits set forth in Appendices
6 A through F are admissible as exhibits at trial. The
7 Government exhibits set forth in Appendix F, however, are not
8 admissible for the truth of the matters asserted therein, but
9 instead are admissible only for the effect, if any, that the
10 communications reflected in those exhibits had on the intended
11 recipient of those communications."

12 It is dated June 25th, 2014. It is signed by
13 representatives from the U.S. Attorney's Office and by
14 Mr. Tulman.

15 And, your Honor, we would respectfully move for the
16 admission of Government's Exhibit 3010 and all exhibits set
17 forth on the attached appendices as stipulated in Government's
18 Exhibit's 3010.

19 THE COURT: All right. It will be admitted.

20 MR. COWLEY: Thank you.

21 (Government's Exhibit 3010 received)

22 THE COURT: And just to be clear, the numbers
23 referenced in the appendices correspond to the numbers of
24 Government exhibits, is that correct?

25 MR. COWLEY: That is correct, your Honor.

E6QBTAG2

Opening - Mr. Tulman

1 THE COURT: All right. Thank you.

2 MR. COWLEY: With that out of the way, your Honor, the
3 United States calls Susan Temkin to the stand.

4 THE COURT: Good morning.

5 SUSAN TEMKIN,

6 called as a witness by the Government,

7 having been duly sworn, testified as follows:

8 THE DEPUTY CLERK: Can you please state and spell your
9 name for the record? And speak very clearly and loudly.

10 THE WITNESS: My name is Susan Temkin, T-E-M-K-I-N.

11 THE DEPUTY CLERK: Thank you.

12 MR. COWLEY: May I proceed, your Honor?

13 THE COURT: You may.

14 MR. COWLEY: Thank you.

15 DIRECT EXAMINATION

16 BY MR. COWLEY:

17 Q. Good morning, Ms. Temkin.

18 A. Good morning.

19 Q. Could you please state and spell your name for the record,
20 please?

21 A. Susan Temkin, T-E-M-K-I-N.

22 Q. And could you tell the jury where you live?

23 A. Los Angeles, California.

24 Q. And are you married, Ms. Temkin?

25 A. Yes, I am.

E6qbttag2

Temkin - direct

1 Q. What's your husband's name?

2 A. Victor.

3 Q. Do you all work or are you retired?

4 A. We're retired.

5 Q. And if you'll pardon me for asking, how old are you and
6 Mr. Temkin?

7 A. Mr. Temkin is 80 and I'm 73.

8 Q. And how long have you all been retired?

9 A. My husband retired in '89 and then he did consulting work
10 and fully retired in about 2012.

11 Q. And prior to you all retiring, can you give us a brief
12 background of the sort of work you and your husband did? I
13 think you just mentioned he did some consulting. How about
14 before that, what sort of work --

15 A. Before that he was an attorney. And then, when we moved to
16 California, he was the head of a division at MCA for licensing
17 and consumer products.

18 Q. Okay. What kind of company is that?

19 A. Music Corporation of America. It was Universal Pictures.

20 Q. And how about you? What sort of job background did you
21 have?

22 A. I had a catering business in New York and I had a cooking
23 school for children. And I did benefit coordinating and
24 interior design, as well.

25 Q. So prior to living in Los Angeles, you all lived in the New

E6qbttag2

Temkin - direct

1 York area for some time?

2 A. Yes, we did.

3 Q. Ms. Temkin, did there come a time when you met a man named
4 Jim Tagliaferri?

5 A. Yes.

6 Q. Do you see him in the courtroom here today?

7 A. Yes.

8 Q. And there's a table on the left and a table on the right.
9 Could you indicate which table that he's sitting on? I guess
10 my left and my right.

11 A. He is on my right and he's wearing a white shirt and a
12 plaid or colored tie.

13 MR. COWLEY: Your Honor, if the record could reflect
14 that the witness has identified the defendant, Mr. Tagliaferri.

15 THE COURT: It shall so reflect.

16 Q. When's the first time that you met Mr. Tagliaferri,
17 Ms. Temkin?

18 A. The first time I met Mr. Tagliaferri was about '99. '98 or
19 '99.

20 Q. And explain to the jury, what was the context of that
21 meeting? How did you come to meet him?

22 A. Mr. Tagliaferri was handling the-- he was the financial
23 advisor for my parents' finances.

24 Q. And did there come a time where he became your investment
25 advisor?

E6qbttag2

Temkin - direct

1 A. He became our investment advisor when my parents died. And
2 my inheritance that I received I turned over or continued
3 having Mr. Tagliaferri handle it.

4 Q. And when was that, approximately?

5 A. I would say 2000/2001.

6 Q. And when Mr. Tagliaferri became your investment manager for
7 those funds, what's the amount of funds we're talking about,
8 approximately? How much money did you entrust in
9 Mr. Tagliaferri's --

10 A. About a million dollars.

11 Q. Now, do you recall executing an agreement with
12 Mr. Tagliaferri regarding the investment management services
13 his company was going to provide?

14 A. Yes.

15 Q. Do you see the Redweld in front of you that has some
16 documents in it, Ms. Temkin?

17 A. Yes.

18 Q. If I could ask you to take a look at Government's Exhibit
19 1470, which I believe is in evidence.

20 A. Okay.

21 Q. Ms. Temkin, you have a paper copy. I think we'll also be
22 able to have it on your screen shortly. So whichever one
23 you're more comfortable with, you can read from. Okay?

24 A. Okay.

25 Q. So what's the title of this agreement?

E6qbttag2

Temkin - direct

1 A. "Investment Management Agreement."

2 Q. And do you recognize it?

3 A. Yes.

4 Q. And could you explain to the jury, briefly, what it is?

5 A. Yeah. It's just the agreement between Taurus Advisory
6 Group and us stating what services would be provided.

7 Q. And what's the date of this agreement?

8 A. The date of this agreement was August 3rd, 2000.

9 Q. And I think you referenced Taurus Advisory Group. Whose
10 company was Taurus Advisory Group?

11 A. Mr. Tagliaferri's.

12 Q. And who did you understand made investment decisions at
13 Taurus Advisory Group on behalf of clients?

14 A. Mr. Tagliaferri.

15 Q. And the parties to this agreement are, on one hand, Taurus
16 Advisory Group, is that correct?

17 A. Yes.

18 Q. And then I see a reference, underlined, to "Trust Fbo Susan
19 L. Temkin, uwo Charlotte D. Lamm Revocable Trust." It goes on
20 and it says "Susan L. Temkin Trustee."

21 Do you see that?

22 A. Yes.

23 Q. Could you tell the jury who Charlotte Lamm was?

24 A. She was my mom.

25 Q. So this is the trust or the funds that you inherited from

E6qbttag2

Temkin - direct

1 your mother. Is that right?

2 A. That's right.

3 (Continued on next page)

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E6qdtag3

Temkin - direct

1 Q. Let's go down, please. Do you see that first numbered
2 paragraph?

3 A. Yes.

4 Q. And what is it titled?

5 A. "Investment Management Service."

6 Q. And go, if you could, please read that first sentence under
7 that paragraph to the jury.

8 A. "The client hereby retains the company to manage the
9 investment of all cash, securities and other assets comprising
10 the investment portfolio placed under the supervision of the
11 company by the undersigned, which portfolio, together with all
12 additions, substitutions and alterations occurring during the
13 term of this agreement, is referred to herein as 'the
14 portfolio.'"

15 Q. So the reference to portfolio, is that a simple -- is that
16 a reference to the money that's in that revocable trust that is
17 referenced above?

18 A. Yes.

19 Q. And if you could read the second sentence, please, under
20 this paragraph?

21 A. "The company is authorized, without further approval by or
22 notice to the undersigned, to make all investment decisions
23 concerning the portfolio and to make purchases, sales and
24 otherwise effect transactions in stocks, bonds, and other
25 securities in the portfolio on behalf of the client."

E6qdtag3

Temkin - direct

1 Q. So, Ms. Temkin, what level of authority was it your
2 understanding that this agreement gave Mr. Tagliaferri's
3 company in terms of investment making decisions on your behalf?

4 A. All authority, total authority.

5 Q. Now, explain to the jury, please, why you were comfortable
6 giving Mr. Tagliaferri that level of control over the
7 portfolio.

8 A. Well, he had been my parents' advisor for years and it had
9 worked really well for them. And we wanted kind of the same
10 thing that they had, which was very conservative, sort of blue
11 chip, liquid stocks.

12 Q. Now, in providing Taurus Advisory Group with this level of
13 control, did you have certain expectations as to how they were
14 going to carry out their investment advisory services?

15 A. Yeah. Yeah. That they would do well with our money and
16 our investments and make it increase.

17 Q. In regards to honesty, what expectations, if any, did you
18 have regarding whether or not Mr. Tagliaferri had to be open
19 and honest with you about the investment decisions he was
20 making?

21 A. I had -- I mean, I had complete faith that he would be open
22 and honest with us and transparent in any decisions that he was
23 making.

24 Q. What expectations did you have regarding whether or not
25 Mr. Tagliaferri needed to disclose things that could affect his

E6qdtag3

Temkin - direct

1 decision making in terms of what investments he was going to
2 put you in?

3 A. Well, I thought that if there was anything that was
4 questionable, he would raise it with us, certainly, before he
5 would make an investment.

6 Q. And why were these sort of expectations important to you in
7 terms of trust, honesty, disclosure, those sort of things?

8 A. Well, I trusted him then, and that was how I expected to do
9 business with him.

10 Q. Let me have you go down, please, to the last sentence in
11 this paragraph that starts "In order that." Could you read
12 that sentence to the jury, please?

13 A. Certainly.

14 "In order that the company may render efficient
15 services to the client under this agreement, the client shall
16 notify the company of any and all changes in the general
17 financial circumstances and investment objectives of the client
18 during the term of this agreement."

19 Q. Do you see the reference to "investment objectives"?

20 A. Yes, I do.

21 Q. Did you and Mr. Tagliaferri have a discussion when he
22 became your investment advisor regarding what investment
23 objectives you had?

24 A. Yes.

25 Q. And what sort of objectives did you lay out for

E6qdtag3

Temkin - direct

1 Mr. Tagliaferri?

2 A. That we wanted things in non-risky, safe securities,
3 because we were old and we didn't want chancy stuff.

4 Q. Now, besides this account that we are talking about,
5 Ms. Temkin, did any other family members also use

6 Mr. Tagliaferri as an investment advisor?

7 A. My brother did.

8 Q. What is your brother's name?

9 A. Douglas Lamm, L-a-m-m.

10 Q. And also in addition to this one, was there another trust
11 that Mr. Tagliaferri started to manage relating to you?

12 A. Yes.

13 Q. And which one was that?

14 (Pause)

15 A. It was a generation-skipping trust for my children. Sorry.

16 Q. That's OK. If you need a moment?

17 A. No.

18 Q. Let's turn to page 2, please.

19 Do you see that, Ms. Temkin?

20 A. Page 2, yes.

21 Q. Do you see the numbered paragraph 2?

22 A. "Delivery of funds and securities."

23 Q. Correct.

24 A. Yes.

25 Q. Do you see the first sentence underneath there says, "All

E6qdtag3

Temkin - direct

1 transactions in the portfolio shall be carried out through such
2 custodians as the client shall designate in writing, and the
3 company is authorized to issue instructions to such custodians
4 with respect to all deliveries of funds or securities in
5 connection with transactions by the company pursuant to this
6 agreement."

7 Do you see that?

8 A. I do.

9 Q. Do you see the reference to "custodians"?

10 A. I do.

11 Q. What do you understand that reference to custodian to mean?

12 A. Well, the custodian was First Investors Bank & Trust, which
13 then changed to State Street Bank.

14 Q. OK. And even -- you know, I guess taking a step back,
15 let's just talk about the concept of a custodian.

16 Were your assets, your money, your securities, were
17 they going to be physically held by Mr. Tagliaferri's company,
18 or were they going to be physically held at like a bank?

19 A. I'm not sure, but I think they would be physically held at
20 the bank.

21 Q. OK. So this custodian -- do you understand IBT, I think
22 you mentioned, and later State Street, that's where your
23 account was physically located, is that correct?

24 A. Yes, that's right.

25 Q. All right. Then pursuant to the language that we talked

E6qdtag3

Temkin - direct

1 about on the first page, who was delegated authority by you to
2 make investment decisions and decisions regarding what
3 securities were going to move in and out of those accounts?

4 A. Mr. Tagliaferri.

5 Q. All right. So -- and the reference we see here about the
6 company is authorized to issue instructions to such custodians
7 with respect to all deliveries of funds or securities, the
8 reference to the company being authorized, that's a reference
9 to Taurus Advisory Group, as you understand it?

10 A. Yes.

11 Q. And let's go down to the next numbered paragraph, which
12 says "fee schedule." Do you see that?

13 A. I do.

14 Q. And could you read that sentence to the jury under "Fee
15 Schedule," please.

16 A. "Fee schedule. For services hereunder, the company shall
17 be entitled to a fee in accordance with the fee schedule
18 annexed as Exhibit A."

19 Q. If I could ask you to go to the last page of this exhibit,
20 which is I think where Exhibit A is, please.

21 A. Yes. Exhibit A.

22 Q. And what's the title of this exhibit to this agreement?

23 A. "Fees for Investment Management Services Are as Follows."

24 Q. And underneath that, does it say, I think, .5 percent on
25 tax exempt securities and cash equivalent?

E6qdtag3

Temkin - direct

1 A. Yes.

2 Q. And then 1 percent on all other assets?

3 A. Yes.

4 Q. So basically what was your understanding as to how
5 Mr. Tagliaferri was going to get compensated by you in exchange
6 for the investment advisory services he was providing?

7 A. He was going to get a percentage of what he did -- I mean,
8 what we made, and they were payable quarterly.

9 Q. So the reference to securities, cash equivalent and other
10 assets, did you understand that to be references to the stuff
11 sitting in your account?

12 A. Yeah, exactly.

13 Q. All right. If we could go back to page 2, please.

14 A. Mm-hmm.

15 Q. Actually, let's go to the signature block, please.

16 All right. Do you recognize your signature there?

17 A. I do.

18 Q. And who signs on behalf of Taurus Advisory Group?

19 A. That criminal.

20 Q. Again, who did you understand to be making the decisions at
21 Taurus regarding what investments you were going to be placed
22 in?

23 A. Jim Tagliaferri.

24 Q. All right. I think we spoke a few minutes ago about the
25 investment objective conversation that you had with

E6qdtag3

Temkin - direct

1 Mr. Tagliaferri at the beginning of this relationship. Do you
2 recall that?

3 A. Yes.

4 Q. I now want to talk about the period of 2000 to
5 approximately 2007, so the first seven years or so where
6 Mr. Tagliaferri is serving as your investment advisor. OK?

7 A. Mm-hmm.

8 Q. And during that time, were your instructions generally
9 complied with?

10 A. Yes.

11 Q. And how often would you speak with someone from Taurus
12 Advisory Group -- actually, I will be more specific. How often
13 did you speak with Mr. Tagliaferri regarding how your
14 investments were doing?

15 A. I don't know, but whenever -- I mean, we were always
16 available for each other whenever we needed to have any
17 questions.

18 Q. And, generally, I think you referenced at first your
19 account was custodied or held at Investors Bank & Trust, is
20 that right?

21 A. That is right.

22 Q. What sort of information would you get about your account
23 from Investors -- Investment Bankers Trust?

24 A. We would get statements.

25 Q. And what sort of things would be reflected on those

E6qdtag3

Temkin - direct

1 statements?

2 A. The trades, what was going in, what was going out, what
3 money was being spent.

4 Q. And would you also get statements from Taurus Advisory
5 Group?

6 A. Yeah, we did.

7 Q. And how often would you get statements first from IBT and
8 then also from Taurus Advisory Group, how often would they
9 come?

10 A. They both came once a month.

11 Q. And which set of statements was more I guess detailed in
12 terms of the line level of different securities and things like
13 that that you were holding in your account?

14 A. Investors Bank & Trust.

15 Q. Now, so he continues as your advisor from 2000 to around
16 2007, correct?

17 A. Correct.

18 Q. All right. I now want to talk about the period of
19 approximately 2007 going forward. OK?

20 A. OK.

21 Q. Around that time, do you recall if Mr. Tagliaferri
22 physically moved the location of his company and changed its
23 name?

24 A. Yes, he did.

25 Q. And does the name TAG VI sound familiar to you?

E6qdtag3

Temkin - direct

1 A. Yes, it does.

2 Q. What is that?

3 A. Taurus Advisory Group moved from Connecticut to St. Thomas,
4 Virgin Islands, and changed its name to TAG VI.

5 Q. So Taurus Advisory Group becomes TAG Virgin Islands around
6 that time?

7 A. That's right.

8 Q. And it goes from -- where was Taurus Advisory Group?

9 A. Stamford, Connecticut.

10 Q. So it moves from Connecticut to St. Thomas?

11 A. Correct.

12 Q. Now, let's take a look at -- well, around 2007, and moving
13 forward, did you notice any sort of changes in the types of
14 investments he was placing you in?

15 A. Yes. I started seeing things I didn't recognize.

16 Q. Let's go and take a look at some of those statements.

17 First let's look at government's Exhibit 1000, and --

18 A. OK.

19 MR. COWLEY: And, Ms. Baskin, before we publish this,
20 if -- with the Court's consent. I see that Ms. Temkin's
21 address is referenced on this, your Honor. We would like, with
22 the Court's consent, for Ms. Baskin to be able to just redact
23 out during the publication phase that sort of information.

24 THE COURT: That is fine.

25 MR. COWLEY: Great.

E6qdtag3

Temkin - direct

1 BY MR. COWLEY:

2 Q. OK. So let's look at the top left of this statement. What
3 is the name of the company that's referenced on the top left
4 here?

5 A. Investors Bank & Trust.

6 Q. All right. Where are they located?

7 A. Maiden Lane, New York.

8 Q. Is that -- that is your New York, New York?

9 A. New York, New York.

10 Q. And then do we see the name of your account that we saw
11 referenced on the investment advisory statement -- investment
12 advisory agreement?

13 A. Yes.

14 Q. Then looking at the top right, underneath "Account
15 Statement," what date range does this account statement cover?

16 A. January 1st through the 31st, 2007.

17 Q. So this is the kind of information you would be getting
18 monthly about what was going on in your account, is that
19 correct?

20 A. That's correct.

21 Q. All right. Let's take a look at the next page, please.

22 Ms. Temkin, I'm not sure if you have all of these
23 pages in a paper copy up there so it might be easier to look on
24 the computer screen for right now.

25 A. Thank you.

E6qdtag3

Temkin - direct

1 Q. OK. So this has -- do you see the section that says "Asset
2 Summary?"

3 A. Yes.

4 Q. All right. Does that just lay out the different types of
5 securities that you are put in?

6 A. Yes.

7 Q. Later underneath that do you see "Income Summary?"

8 A. I do.

9 Q. And does that also talk about -- reference different
10 securities that you are put in?

11 A. Yes.

12 Q. Do you see a reference to things like corporate bonds?

13 A. I do.

14 Q. Do you see a reference to things like equities?

15 A. Yes.

16 Q. And a reference to things like other assets?

17 A. Mm-hmm. Yes.

18 Q. And then let's -- if we go forward to the next page,
19 please.

20 All right. Do you see how it is titled "Account
21 Holdings?"

22 A. I do.

23 Q. OK. And do you see references to -- what are these
24 references to, these sort of individual things?

25 A. They are references to different companies in which we

E6qdtag3

Temkin - direct

1 invested.

2 Q. And let's go down to "Equities," for example.

3 A. OK.

4 Q. Do you see -- what are the first two companies referenced
5 under Equities?

6 A. Bowing and General Electric.

7 Q. You heard of those companies before?

8 A. I have.

9 Q. All right. Now let's move forward, if we could, to the
10 March 2007 statement. And, Ms. Baskin, I think this is page 16
11 of the PDF.

12 OK. So looking at this page, up on the top right,
13 what is the month that this statement covers?

14 A. This is March 1st through 31st, 2007.

15 Q. And what is the heading of the information that's conveyed
16 here sort of up at the top left?

17 A. "Account Activity."

18 Q. So basically is it your understanding that this shows sort
19 of what's moving in and out of your account for that relevant
20 month?

21 A. Yes.

22 Q. Let me draw your attention to a few different transactions.

23 Let's look at March 7, 2007. Do you see something
24 under that date referred to as a disbursement?

25 A. Yes. Yes.

E6qdtag3

Temkin - direct

1 Q. And there, what institution does it say that that
2 disbursement is going to?

3 A. Valley National Bank.

4 Q. And at the sort of very bottom of the information for that
5 disbursement, what is the security being referenced there?

6 Do you see where it says "Mortgage Note?"

7 A. Oh, yeah. Mine is not that -- yes, "Mortgage Note."

8 Q. And what is the amount of money leaving your account?

9 A. \$200,000.

10 Q. And let's go down a little lower, if we could, to
11 March 14th, 2007.

12 Do you see that disbursement?

13 A. I do.

14 Q. And what is the amount of money that's leaving your account
15 for that disbursement?

16 A. \$1,375.61.

17 Q. And going down a little further, to March 22nd, 2007, do
18 you see another disbursement?

19 A. Yes.

20 Q. And what is that amount?

21 A. It is \$100,000.

22 Q. Going back up to the March 14th one, who does that indicate
23 that it's going to?

24 A. Taurus Advisory Group.

25 Q. And what's the basis for ha disbursement?

E6qdtag3

Temkin - direct

1 A. It was an investment management fee.

2 Q. So that's the type of fee that we saw referenced in Exhibit
3 A of your Investment Advisory Agreement, is that correct?

4 A. That's right.

5 Q. Going down to March 22, 2007, that disbursement, what does
6 that indicate that it is going to?

7 A. It's going for an IEAH note.

8 Q. And what is the specific account that it says that it is
9 going to?

10 A. Valley National Bank.

11 Q. And do you see a reference to an AC and then a series of
12 numbers followed by a name?

13 A. Yes, I do.

14 Q. And what is the -- what is the name behind that account
15 number?

16 A. The name is Barry Feiner, Esq.

17 Q. Now, let's move forward and take a look, please, at page 22
18 of this PDF, please.

19 So this account statement is for the following month,
20 is that correct?

21 A. Yes. April.

22 Q. And if we could go down to page -- do you see the 4/19/07
23 disbursement?

24 A. I do.

25 Q. How much money is leaving your account on that date?

E6qdtag3

Temkin - direct

1 A. \$100,000.

2 Q. And what is that for the purchase of?

3 A. Purchase of IEAH convertible note.

4 Q. Now, Ms. Temkin, at the time that we are talking about,
5 early to mid-2007, how much focus are you paying on sort of the
6 line-by-line securities like these in your account statements?

7 A. Not a lot.

8 Q. What are you focusing on when you get these account
9 statements in?

10 A. I was focusing on the bottom line.

11 Q. And why didn't you feel a need to look at sort of
12 particular securities in your account at that time, sort of in
13 early 2007?

14 A. Because I thought that whatever Jim was doing, he was doing
15 for me.

16 Q. To what extent was your trust in Mr. Tagliaferri a factor
17 in your feeling like you didn't need to do a line-by-line at
18 the time?

19 A. It was total. It was complete.

20 Q. If we can move forward, please, to page 27. OK.

21 So what is the account statement time period for this
22 account statement?

23 A. This is May. May 1st through 31st.

24 Q. And what is the title of the section that is referenced on
25 this account statement?

E6qdtag3

Temkin - direct

1 A. "Account Holdings."

2 Q. And do you see the subtopic there called "Other Assets?"

3 A. Yes, I do.

4 Q. Do you see the first other asset, do you see it being with
5 a tax cost of \$200,000?

6 A. I do.

7 Q. And do you recall seeing in a statement that we looked at
8 earlier about \$200,000 going -- actually exactly \$200,000 going
9 out relating to a mortgage note?

10 A. Yes.

11 Q. And at the time did you have any idea what 1920 Bel Air LLC
12 was?

13 A. None at all.

14 Q. And under the next asset, do you see -- what do you
15 understand that next asset to be?

16 A. Conversion Services International.

17 Q. And the next asset, what did you understand that to be an
18 investment in?

19 A. International Equine Acquisitions.

20 Q. And is that -- do you recall seeing transfers out of your
21 account relating to International Equine Acquisitions?

22 A. Yes.

23 Q. Now, when you got your monthly account statements, were you
24 also sent copies of these securities that were being held in
25 your account?

E6qdtag3

Temkin - direct

1 A. From?

2 Q. From IBT or from anyone. Did you just get the account
3 statements, or did you also get things like if there was a Sub
4 Note in your account or things like that, were you sent a copy
5 of those at the time?

6 A. The notes that we got from TAG's office didn't spell out
7 everything the same way it did from Investors Bank & Trust.

8 Q. I asked that question a little awkwardly. Let me try and
9 rephrase it in another way.

10 I am not talking about statements. We understand that
11 you got account statements from IBT and also TAG. What I'm
12 asking is, in addition to those statements, did you also get
13 physical copies of these securities, like a stock certificate
14 and things like that, sent to you?

15 A. No. No.

16 Q. Did you feel any need to ask to get copies of those things,
17 as well?

18 A. I assumed they were being held securely.

19 Q. And at the time did you have any idea what kind of company
20 IEAH was?

21 A. No, I didn't.

22 Q. How about 1920 Bel Air LLC, any idea about that?

23 A. I still don't know what that is.

24 Q. Now, if you had known -- if we could go back, please, to
25 what is I think page 22 of this PDF, please, Ms. Baskin.

E6qdtag3

Temkin - direct

1 So this is the April statement. Do you recall that we
2 just looked at that?

3 A. Mm-hmm.

4 Q. And, again, near the bottom, do you see that reference of
5 \$100,000 going out of your account?

6 A. Yes, I do.

7 Q. And if you had known at the time, Ms. Temkin, that
8 Mr. Tagliaferri had made an arrangement with IEAH where his
9 company, TAG VI, would actually receive as a fee a percentage
10 of the TAG client funds he caused to be transferred for
11 investments in IEAH, would that have been important to you at
12 the time?

13 A. It certainly would have been important to me at the time.

14 Q. Can you explain to the jury why that would have been
15 important information to you?

16 A. Because I was paying him a fee, and he's getting money from
17 people he's using my money to invest in. It's like -- it was
18 like a shell game.

19 Q. Well, let me ask you this. Where did you expect all of
20 that money to be going to?

21 A. To the company that was listed.

22 Q. If you had known that a portion of that money was actually
23 going to be routed down to Mr. Tagliaferri's corporate account
24 in the Virgin Islands, would that have been important
25 information to you?

E6qdtag3

Temkin - direct

1 A. Very important information to me.

2 Q. And explain to the jury why that would have been important.

3 A. Because we were being duped.

4 Q. What concerns -- let's be specific. What sort of concerns
5 would that have raised in your mind about Mr. Tagliaferri's
6 motivations?

7 A. Well, I call it double-dipping.

8 Q. And why is that? Explain what you mean by that.

9 A. You can't take from both sides. If you're getting paid by
10 somebody, that's it; you don't then take it from the other end
11 of the agreement as well, which was what was happening,
12 clearly.

13 Q. What concerns would you have had regarding
14 Mr. Tagliaferri's motivations to invest in a particular
15 security?

16 A. Well, his motivations were clearly for him, not for us.

17 Q. If you had known that at the time, if you had found out
18 information like that, that he was getting a fee like that,
19 would you have continued to have Mr. Tagliaferri as your
20 investment advisor?

21 A. No.

22 Q. Would you have strongly indicated to him that you wouldn't
23 be put in securities where that sort of arrangement was being
24 made?

25 A. I certainly would have.

E6qdtag3

Temkin - direct

1 Q. Now, when did you come to learn that you were invested in
2 IEAH, approximately?

3 A. Well, it was about the time that Big Brown was running.
4 And I got a call from my sister-in-law, who said, Do you
5 realize you are -- you own part of Big Brown? I said, What are
6 you talking about? She said, Look at your statement. IEAH,
7 that's the horse.

8 That's when I realized that -- I don't know if that
9 was 2008, I don't know what -- I guess when he started to run.
10 But that was when I realized what IEAH was.

11 Q. What sort of concerns did you have when you learned that
12 you were invested in a company relating to owning racehorses?

13 A. My concern was that we didn't have enough money to invest
14 in racehorses.

15 Q. Was an investment in a company like IEAH consistent or
16 inconsistent with the guidance and directions you had given
17 Mr. Tagliaferri?

18 A. Well, it certainly wasn't blue chip and it certainly wasn't
19 safe and it certainly wasn't liquid.

20 Q. And did you ask Mr. Tagliaferri, did you express this
21 concern -- these concerns to Mr. Tagliaferri?

22 A. Yes.

23 Q. And what assurances did he give you?

24 A. He assured me that it was safe and that, you know, not to
25 worry, that everything was going to be OK.

E6qdtag3

Temkin - direct

1 Q. And based on those assurances, did you develop a comfort
2 level with being in that security for a time?

3 A. For a little while I did. But it nagged because it was
4 always wrong.

5 Q. I mean, Big Brown is a pretty exciting things to watch,
6 fair to say?

7 A. Absolutely.

8 Q. Get swept up in it a little?

9 A. Absolutely.

10 Q. Do you recall if you ever attended any horseraces relating
11 to IEAH?

12 A. We went to a race once. I can't remember if it was -- I
13 think it was maybe Belmont. I can't remember. And it was
14 exciting. And his assurances -- you know, helped me think this
15 was OK.

16 Q. Now, we've talked about IEAH. I want to now talk about
17 another security that you were invested in.

18 Ms. Baskin, if we could please go to page 102 of the
19 PDF.

20 All right. Now, so we're skipping ahead a bit. Some
21 of the account statements that we looked at before were sort of
22 March/April 2007. What is the date of this account statement?

23 A. June 1st through 30th, 2008.

24 Q. And let's go down and take a look at some of the things
25 that you are invested in at this time.

E6qdtag3

Temkin - direct

1 Do you see a reference to "Fund.com" under "Equities?"

2 A. Yes, I do.

3 Q. Do you have any understanding of what Fund.com was at the
4 time?

5 A. No.

6 Q. And if we could go down to just I guess the next page,
7 please, Ms. Baskin. Page 103.

8 OK. Do you see that under "Other Assets," that Bel
9 Air -- that 1920 Bel Air note that we looked at previously is
10 no longer there; is that correct?

11 A. That's correct.

12 Q. Do you see assets relating to IEAH that are still there?

13 A. Yes, I do.

14 Q. Let's look at the account activity for this month, please.
15 If we could go to page 105.

16 OK. Now I now want to drill down on a few particular
17 transactions that we see happening in your account.

18 First, do you see -- let's look at June 20th, 2008,
19 please.

20 Do you see that, Ms. Temkin?

21 A. I do, yes.

22 Q. All right. So on June 20, 2008, how much money is going
23 out of your account?

24 A. \$49,910.

25 Q. And what does it say it is for purchase of?

E6qdtag3

Temkin - direct

1 A. It says it is for purchase of Fund.com shares.

2 Q. And, again, where did you think your 49-nine was going when
3 that money was leaving your account?

4 A. To a company called Fund.com.

5 Q. If you had come to learn that a portion of this money was
6 just -- or this money was just pooled with another set of
7 investor money and a portion of that was sent down to
8 Mr. Tagliaferri's corporate account in the Virgin Islands,
9 would that have been important for you to know?

10 A. It would be important.

11 Q. Would that have been a material thing for you to know in
12 deciding whether or not to continue to trust Mr. Tagliaferri
13 with your money?

14 A. Yes. Of course.

15 Q. Let's go down to June 25th, 2008. Do you see that?

16 A. Yes.

17 Q. Do you see a little -- I'm sorry. Do you see the reference
18 to the \$200,000 coming in?

19 A. One second.

20 (Pause)

21 Yes there it is, yes.

22 Q. OK. So this is money that's actually coming into your
23 account, is that correct?

24 A. That's right.

25 Q. There is no little minus signed behind it?

E6qdtag3

Temkin - direct

1 A. No.

2 Q. So how much money is coming into your account on June 25,
3 2008?

4 A. \$200,000.

5 Q. What does it say it relates to, what security?

6 A. Bel Air, 1920 Bel Air.

7 Q. Ms. Temkin, had you known that that \$200,000 that was
8 coming back into your account was simply coming from the same
9 pool of money that your \$49,900 was sent to, would that have
10 been important for you to know?

11 A. Yes.

12 Q. Put differently, if you knew that the disbursement of money
13 out of your account in June 20th was part of the funds being
14 used to make the payment into your account on June 25th, would
15 that have been important information for you to know?

16 A. It is important information.

17 Q. Would you have been comfortable continuing to invest with
18 Mr. Tagliaferri had you known that?

19 A. Of course not.

20 Q. And can you explain -- you say "of course not." Can you
21 explain to the jury why that would have made you so
22 uncomfortable?

23 A. It just was wrong. I mean, you don't take other people's
24 money to -- it is like robbing Peter to pay Paul. You don't
25 take money from other investors to give back to an investor so

E6qdtag3

Temkin - direct

1 it looks like investor number 2 is getting something. It is
2 just -- it just stinks.

3 Q. In this case, if you had known that it was your own money
4 that was being used to pay you back in regard to another
5 investment?

6 A. Even worse.

7 Q. And would you have continued to trust Mr. Tagliaferri with
8 your money had you known that that sort of thing was going on?

9 A. No.

10 Q. If you had known -- do you see the reference to 1920 Bel
11 Air LLC?

12 A. Yes.

13 Q. That cash received coming in?

14 A. Yes, I do.

15 Q. Again, did you have any idea what Bel Air LLC was?

16 A. No.

17 Q. If you had known that that was an entity that was helping
18 to pay for a house in Los Angeles for someone affiliated with
19 Fund.com, would that have been important information for you to
20 know?

21 A. What did you say?

22 Q. Sure. Let me ask the --

23 MR. TULMAN: Objection, your Honor.

24 THE COURT: I am going to sustain the objection.

25 You don't have to answer that. He will ask you

E6qdtag3

Temkin - direct

1 another question.

2 THE WITNESS: OK. Thanks.

3 MR. COWLEY: Just briefly for the record.

4 Materiality, your Honor.

5 THE COURT: And it is subject to connection?

6 MR. COWLEY: Absolutely.

7 THE COURT: All right. Then I will allow it.

8 BY MR. COWLEY:

9 Q. So, Ms. Temkin, if you had known that this 1920 Bel Air LLC
10 was an entity that was used to pay for a home that someone
11 affiliated with Fund.com was living in, would that have been
12 important information for you to know? Would you have felt
13 comfortable with that investment knowing that?

14 A. Of course not.

15 Q. I'm so sorry --

16 A. Of course not.

17 Q. Thank you. All right. So it's June 2008, I think we've
18 looked at the statement from there. Let's look briefly at
19 July 2008.

20 If we could go to page 110 of Government's Exhibit
21 1000.

22 All right. Do you see a reference under "Other
23 Assets" to "Geomas?"

24 A. I do.

25 Q. And do you see a reference to again International Equine

E6qdtag3

Temkin - direct

1 Acquisition Holdings?

2 A. Yes.

3 Q. And do you see a reference to a mortgage Sub Note?

4 A. Yes.

5 Q. Did you have any idea at the time what the reference to
6 mortgage Sub Note was?

7 A. No.

8 Q. Any idea what these were about?

9 A. No. I just know they were continued investments.

10 Q. If we could look at page 111, please.

11 And do you see some money going out of your account on
12 July 1st, '08 for the purchase of Geomas and Fund.com shares?

13 A. Yes.

14 Q. And where did you expect -- when that money went out of
15 your account, where did you expect it was going to?

16 A. Geomas and Fund.com shares.

17 Q. If you had known that that money was just being pooled with
18 other investor money and a portion of it was being sent down to
19 a TAG Virgin Islands' corporate account, would that have been
20 important?

21 MR. TULMAN: Objection.

22 A. Yes, it would have been important.

23 THE COURT: Overruled.

24 MR. COWLEY: Your Honor, subject to connection, of
25 course.

E6qdtag3

Temkin - direct

1 THE COURT: Sorry to interrupt.

2 Did you finish your answer?

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 BY MR. COWLEY:

6 Q. So we've talked about Geomas, we've talked about Fund.com
7 and a few other securities. I am now going to talk about IEAH
8 again. And let's move forward in time to September 2008.

9 Do you recall if you received correspondence around
10 that time from Mr. Tagliaferri relating to IEAH?

11 A. September did you say?

12 Q. Yes. We can show it to you.

13 A. OK.

14 Q. If you give me a moment.

15 A. That would be better.

16 Q. Do you see a document in your Redweld that's marked as
17 Government's Exhibit 1451, please, Ms. Temkin?

18 A. Yes. I have it.

19 Q. Do you recognize that as correspondence that
20 Mr. Tagliaferri sent to you?

21 A. Yes.

22 Q. Around September 2nd, 2008?

23 A. Yes.

24 MR. COWLEY: Your Honor, I move to admit Government's
25 Exhibit 1451.

E6qdtag3

Temkin - direct

1 THE COURT: Any objection?

2 MR. TULMAN: I didn't see it.

3 THE COURT: Mr. Tulman needs a copy.

4 (Pause)

5 MR. TULMAN: No objection.

6 THE COURT: All right. It will be admitted.

7 (Government's Exhibit 1451 received in evidence)

8 BY MR. COWLEY:

9 Q. All right, Ms. Temkin.

10 MR. COWLEY: So if we could ask, please, Ms. Baskin,
11 for that same redaction of an address?

12 THE COURT: That's fine.

13 MR. COWLEY: Thank you.

14 Q. OK. So what is the date of this correspondence?

15 A. September 2, 2008.

16 Q. And does this letter have to do with IEAH?

17 A. Yes, it does.

18 Q. OK. So let's just briefly walk through it.

19 For the first paragraph, do you see a reference to
20 documents being enclosed relating to IEAH holdings and your
21 fractional interest in racehorses?

22 A. Yes.

23 Q. Do you see a reference to you having received interest in
24 particular horses?

25 A. Yes.

E6qdtag3

Temkin - direct

1 Q. And what are some of the horses that are named there?

2 A. Big Brown, Kip Deville, and Shaggy Mane.

3 Q. And what does the next sentence read?

4 A. "We formed an LLC, Pegasus Holdings Group Stables, LLC, to
5 take title to the horses."

6 Q. And if you go down a little further, do you see a reference
7 to "I became the managing member"?

8 A. "I became the managing member, and each owner client will
9 become a nonmanaging member."

10 Q. OK. Again, who is this letter from?

11 A. Jim Tagliaferri.

12 Q. So he's forming an LLC, Pegasus Holdings, and it is going
13 to hold the interest that different clients have in these
14 different horses, is that right?

15 A. That's right.

16 Q. And he's enclosing documents relating to that?

17 A. Yes.

18 Q. All right. If we could go down a little further. Do you
19 see a reference to a Pegasus operating agreement?

20 A. I do.

21 Q. And do you see a reference to a statement of your net
22 personal earnings?

23 A. Yes.

24 Q. And what's the amount reflected there?

25 A. \$5,825.11.

E6qdtag3

Temkin - direct

1 Q. OK. So this was money relating to your IEAH investment
2 that you got some money back, correct?

3 A. Right.

4 MR. TULMAN: Objection.

5 THE COURT: No. Overruled.

6 BY MR. COWLEY:

7 Q. OK. And if you can read -- let's go down to the last
8 paragraph, please.

9 Actually, let's go to the second-to-last, for
10 completeness. Can you just read that paragraph to the jury?

11 A. "The success IEAH has enjoyed on the track has triggered
12 interest among several suitors who are interested in acquiring
13 a significant stake in the company. While we cannot predict if
14 the deal will occur, we believe it is in your best interest to
15 convert your notes into IEAH common stock."

16 Q. So in reference to that paragraph, is there a reference to
17 being able to convert the note into stock?

18 A. Yeah. That's what he's suggesting.

19 Q. Mm-hmm. And let's go down to the bottom paragraph, please.
20 And if you could read that to the jury.

21 A. "For the record, we've provided financial advice to IEAH
22 and are representing the company in its discussions with
23 prospective buyers. For these services we have received
24 consulting fees. This raises the potential for a conflict of
25 interest among TAG VI, its clients, and IEAH. I would be happy

E6qdtag3

Temkin - direct

1 to discuss these arrangements at your convenience."

2 Q. Ms. Temkin, would it have been important for you to know
3 about a potential conflict before your money was invested in
4 IEAH?

5 A. Of course it would have been important.

6 MR. COWLEY: If we could please have a split screen,
7 Ms. Baskin, between Government's Exhibit 1451 and page 16 of
8 Government's Exhibit 1000.

9 Q. All right. So what's the date of the account statement
10 that we see on the right of your screen?

11 A. March 1, 2007.

12 Q. Do you see the transfer out of \$100,000 relating to IEAH?

13 A. Yes.

14 Q. And so that's March of '07. What's the date of this letter
15 from Mr. Tagliaferri on the left?

16 A. September 2008.

17 Q. Are you aware of approximately how much money he had caused
18 you to invest in IEAH by that point?

19 A. Hundreds of thousands of dollars.

20 Q. Did you have a choice as to whether or not you would be
21 invested in IEAH at this point?

22 A. I was invested in IEAH at this point.

23 Q. And in looking at this paragraph and focusing on your
24 understanding at the time, where, if anywhere, in this

25 paragraph does it make a disclosure that Mr. Tagliaferri had

E6qdtag3

Temkin - direct

1 made arrangements with IEAH to receive a portion of client
2 money that was sent to IEAH?

3 A. Nowhere.

4 Q. So based on this letter, did you feel the need to give
5 Mr. Tagliaferri a call and ask if such an arrangement existed?

6 A. I did not. My money was gone.

7 Q. Did you understand, was this -- were there any prior
8 mentions, to your recollection, of any conflicts of interest or
9 anything like that?

10 A. No.

11 MR. COWLEY: And then -- if I could approach, your
12 Honor?

13 THE COURT: Yes.

14 MR. COWLEY: Thank you.

15 Q. I'm going to hand you what's been marked for
16 identification, it is a copy -- it is Government's Exhibit
17 1451A.

18 Is this something that you recognize?

19 A. Yes.

20 Q. And is this some of the Pegasus-related paperwork
21 affiliated with that September 2nd, 2008 email?

22 A. Yes.

23 Q. Excuse me. Letter.

24 A. Letter, yes.

25 MR. COWLEY: Your Honor, I move to admit Government's

E6qdtag3

Temkin - direct

Exhibit 1451.

THE COURT: Any objection?

MR. TULMAN: No objection.

THE COURT: It would be admitted.

(Government's Exhibit 1451 received in evidence)

BY MR. COWLEY:

Q. We don't have that electronically, but just looking through it, does it relate to your holdings and horses relating to Pegasus?

A. Yes, it does.

Q. OK. So we've talked about -- we've gone up to September 2008. We've talked about a number of different securities, and we have just looked at this letter on September 2, 2008.

Going forward after that, did you have concerns about how much money of yours was being placed in IEAH?

A. Yes, I did.

Q. And did you relay those concerns to Mr. Tagliaferri?

A. Yes, I did.

Q. Let's now take a look at what I believe is in evidence as Government's Exhibit 1452, as evidence limited to the effect on the listener.

OK. So this is an email that is that is sent from whom to whom?

A. From me to Jim Tagliaferri.

E6qdtag3

Temkin - direct

1 Q. And what is the date of this?

2 A. This was November 14, 2008.

3 Q. And let's just -- if you could for the jury, please, just
4 read that first paragraph.

5 A. "Jim, Victor and I are really worried about the liquidity
6 in our portfolio. Both of us are uncomfortable and we would
7 really feel better in a mostly cash position. We should have a
8 phone conversation soon at your earliest convenience."

9 Q. And going down, do you see a reference specifically to
10 IEAH?

11 A. "I notice that the IEAH convertible Sub Note of 9/17/08 has
12 not been paid nor has the 6 percent of 17/12/08. It seems that
13 we have over \$600,000 tied up in IEAH. Also, there is a
14 \$150 mortgage Sub Note which I have no idea what it is."

15 Q. So what is the concern that you are relaying to
16 Mr. Tagliaferri in this email in November 2008?

17 A. That we are really concerned, that we are really nervous,
18 and we really need to understand what's going on.

19 Q. And did you see a reference -- in that paragraph about
20 IEAH, is there a reference to payments that were due that had
21 not been made yet?

22 A. Yeah.

23 Q. So this is November of 2008. Did your concerns continue
24 into 2009?

25 A. Yes, they did.

E6qdtag3

Temkin - direct

1 Q. If I could now ask you to take a look at what's been marked
2 for identification as Government's Exhibit 1453, which should
3 be in your Redweld.

4 A. I have it.

5 Q. Do you recognize this as a letter that you sent to
6 Mr. Tagliaferri?

7 A. Yes, I do.

8 Q. And what is the date of the letter?

9 A. May 18, 2009.

10 MR. COWLEY: Your Honor, I move to admit Government's
11 Exhibit 1453.

12 THE COURT: Any objection?

13 MR. TULMAN: No objection.

14 THE COURT: It will be admitted.

15 (Government's Exhibit 1453 received in evidence)

16 BY MR. COWLEY:

17 Q. OK. So what is the date of this letter to Mr. Tagliaferri?

18 A. May 18, 2009.

19 Q. And go ahead and just read the first paragraph, please.

20 A. "Dear Jim, both Victor and I are very concerned about the
21 present state of our portfolio. We've lost on paper
22 approximately \$600,000 in the last six months and roughly
23 42 percent of the remainder is invested in IEAH."

24 Q. So this is additional concerns being relayed, is that
25 right?

E6qdtag3

Temkin - direct

1 A. That's right.

2 Q. And do those concerns continue into 2010?

3 A. Yes.

4 Q. Let's take a look, if we could, through Government's
5 Exhibit 1456.

6 Actually, before you go there, let me ask you, if you
7 could -- put that aside for a moment and let's just stay
8 chronologically. So we are in 2009 now, is that correct?

9 A. Correct.

10 Q. OK. Now, IEAH is only one of many securities that you are
11 holding, correct?

12 A. Correct.

13 Q. And did you ultimately lose money on all the securities
14 that you held in your portfolio?

15 A. Everything.

16 Q. Now, were there some securities that you may have held that
17 you may have made a profit on?

18 (Pause)

19 For example, White Energy? Have you heard the
20 investment White Energy?

21 A. I was about going to say White Energy. Yes, we make a
22 profit on White Energy, yes.

23 Q. In terms of the profits that you made, how did those
24 compare ultimately to the losses that you sustained?

25 A. The losses were -- far outweighed the profits.

E6qdtag3

Temkin - direct

1 Q. Let's talk about Fund.com, again.

2 If we could go to Government's Exhibit 1000, page 189,
3 please.

4 THE COURT: Mr. Cowley, I think we should take a break
5 in the next five or so minutes. OK?

6 MR. COWLEY: Sure. Would now be a convenient time,
7 your Honor? If you wanted me to proceed, I am happy to, but
8 this is sort of a subject matter break.

9 THE COURT: That is fine.

10 Since we are starting a new subject matter, why don't
11 we take our lunch break now. We will take a little bit over an
12 hour. So we will meet back here at 2:15.

13 Please remember, don't discuss the case and keep an
14 open mind. Thank you.

15 (Jury not present)

16 THE COURT: Come back at 2:15, please, and we will
17 resume with the testimony. Thank you.

18 (Luncheon recess)

E6qbttag4

Trial

A F T E R N O O N S E S S I O N

(In open court; jury not present)

THE COURT: One of the jurors notified my deputy that she has to be out by five because she has her grandchild's graduation, so let's try and stop a minute or two before five. Thank you.

You may be seated back up here. Thank you.

Can I get an updated exhibit list tomorrow including what's been admitted today?

MS. BASKIN: Yes.

THE COURT: Thank you.

(Continued on next page)

E6qbttag4

Trial

(In open court; jury present)

THE COURT: You may be seated. You may proceed,

Mr. Cowley.

DIRECT-EXAMINATION (Continued)

BY MR. COWLEY:

Q. Good afternoon, Ms. Temkin.

A. Good afternoon.

Q. So I think where we left off, we were around the 2009 time period. If you'll recall, we had looked at some correspondence between you and Mr. Tagliaferri in 2009.

Do you recall that?

A. Yes.

Q. Let me go back and ask just sort of broad questions.

We had saw your investment advisory agreement that you executed in 2000 with Mr. Tagliaferri, correct?

A. Correct.

Q. I think you testified earlier that you had had a conversation with Mr. Tagliaferri about your investment objectives.

Do you recall that?

A. Yes.

Q. So going forward up to 2009 and on, did you ever have a conversation with Mr. Tagliaferri where you changed your investment objectives or did they stay the same?

A. No, they stayed the same.

E6qbttag4

Temkin - direct

1 MR. COWLEY: And if we could please have Government
2 Exhibit 1000 back up? Just the front page will be fine for
3 now. Thank you.

4 (Pause)

5 MR. COWLEY: There we go. Okay.

6 Q. Again, in looking at this, the custodian is originally
7 Investors Bank & Trust, is that correct?

8 A. Correct.

9 Q. And who chose the custodian? Was this your selection or
10 was it Mr. Tagliaferri's?

11 A. Mr. Tagliaferri's.

12 Q. So now, like I said, where we left off we were in the 2009
13 period. So let's look at some transactions in 2009.

14 MR. COWLEY: Ms. Baskin, if you could go to page 189
15 of this exhibit, please. Okay.

16 Q. So, again, let's talk about custodians for a moment.
17 What's the custodian name that you see referenced on the
18 account?

19 A. State Street.

20 Q. And do you have an understanding as to whether IBT merged
21 into State Street?

22 A. Yes.

23 Q. And what's the relevant month of account activity that
24 we're looking at here?

25 A. I'm sorry.

E6qbttag4

Temkin - direct

1 Q. Sure. It's at the top right.

2 A. Where it says "cash amount"?

3 Q. Under just the date range, the month that we're --

4 A. I'm sorry. I'm sorry. October 1st through October 31st.

5 Q. Great. Of what year?

6 A. 2009.

7 Q. All right. So going down and looking at some of the
8 account activities here, do you see reference of sales of
9 Fund.com shares out of your account? It will be the second and
10 third entries on the page, I believe.

11 A. There's a sale on 9/28 of 30,000 shares and a sale on 10/1
12 of 30,000 shares.

13 Q. So on the right side where we see "cash amount," is that
14 cash coming into your account?

15 A. I would assume so.

16 Q. So what we have going on here is sales of Fund.com shares
17 out of your account and cash coming in, is that correct?

18 A. That's correct.

19 Q. If you had learned that Mr. Tagliaferri executed this
20 transaction by causing another client to simultaneously
21 purchase Fund.com stock, would that have been important
22 information for you to know?

23 THE COURT: I'm going to overrule --

24 MR. COWLEY: Objection.

25 THE COURT: I'm going to overrule the objection.

E6qbttag4

Temkin - direct

1 You may answer that.

2 A. Yes. Yes.

3 Q. And explain to the jury why that would have been important
4 information for you to know.

5 A. Because it would make me feel like he had other interests
6 at heart other than mine; that he had some arrangement where he
7 was getting money from one company and getting money from me.
8 And it would be wrong for the other client.

9 Q. So, again, let's drill down on that issue in terms of why
10 it would be important to you in regard to there being another
11 client involved.

12 What sort of comfort level would you have knowing that
13 it was another client on the other side of this transaction
14 involving the same security?

15 A. Well, I had no confidence because he might be doing the
16 same thing to me and it would just be horrendous.

17 Q. Do you recall if there was any-- did you have any
18 conversations with Mr. Tagliaferri where he discussed any
19 specific cross-trades with you, trades between client accounts?

20 A. No, never. Of course not. No.

21 Q. Did your concerns continue going into 2010, Ms. Temkin?

22 A. Yes. Yes, it did.

23 Q. Let's take a look, if we could, at Government Exhibit 1456,
24 which you should have a paper copy in front of you in the
25 Redweld. Just let me know when you found it.

E6qbttag4

Temkin - direct

1 A. Just a second, please. Okay. I have it.

2 Q. You see it, Government Exhibit 1456?

3 A. Wait. I have 1453. Sorry. Yes, I have 1456.

4 Q. Great. And is that a document that you recognize,
5 Ms. Temkin?

6 A. Yes, I do.

7 Q. What is it?

8 A. It's a fact from me.

9 Q. And who are you sending it to?

10 A. To Jim Tagliaferri.

11 MR. COWLEY: Your Honor, move to admit Government
12 Exhibit 1456.

13 THE COURT: Any objection?

14 MR. TULMAN: No objection.

15 THE COURT: It will be admitted.

16 (Government's Exhibit 1456 received)

17 Q. Great. And it will also be available on your screen now,
18 if you'd like.

19 A. Okay.

20 Q. So is this a fax cover page?

21 A. Yes.

22 Q. And who were you sending this to?

23 A. It's to Jim.

24 Q. And what's the date of this?

25 A. February 5th, 2010.

E6qbttag4

Temkin - direct

1 Q. And let's turn the page and see what we have. Okay. So is
2 this the body of the letter that you were sending to
3 Mr. Tagliaferri?

4 A. Yes, it is.

5 Q. If you could read the first paragraph, please.

6 A. "Dear Jim, it is very difficult for me to write this note.
7 You have managed my money eight or nine years. I told you two
8 or three years ago that Victor and I were worried about the
9 safety of our investments. Your response was to change our
10 portfolio and invest heavily in companies we never heard of and
11 IEAH. I am even less comfortable today, and I feel that there
12 has been no meaningful move towards a less-risky portfolio
13 except at our specific urging. That's unsatisfactory and
14 troubling."

15 Q. Let me just stop you there.

16 Describe to the jury your sort of state of mind right
17 at this point, February of 2010, about your investments.

18 A. We were worried all the time. We weren't sleeping. I
19 mean, it was just horrible. We couldn't get away from it and
20 we couldn't make it better.

21 Q. And in terms of this account, to what extent did you rely
22 on money from this account for expenses?

23 A. I was relying on this account for a monthly check.

24 Q. How much money per month, approximately, would you
25 withdraw?

E6qbttag4

Temkin - direct

1 A. Ten thousand dollars a month.

2 Q. And this is after you were retired, is that correct?

3 A. Yeah.

4 Q. Let's look at the second paragraph, please. If you could
5 read that to the jury.

6 A. "Jim, Victor and I are very worried. The losses which
7 showed up on the December statements of \$24,000 and \$10,000,
8 along with the still missing \$42,000 greatly perturb me."

9 Q. I see a reference there to "the still missing \$42,000." Do
10 you recall what that's a reference to?

11 A. Yeah, that was the Geomas note that we kept trying to find
12 out-- I mean, it was past due and it never came back.

13 Q. And if you could read the next paragraph, please.

14 A. "This money represents a significant portion of our assets,
15 which I have mentioned several times before. We are not
16 sophisticated investors and we have trusted you, but I'm sure
17 that having 75 percent of our monies in IEAH is not
18 conservative investing. I have repeatedly asked that any money
19 coming due is put in Treasury bills and other less vulnerable
20 situations. Surely you can see from these requests how anxious
21 I am for more secure positions."

22 Q. Ms. Temkin, I think we talked earlier around the 2007 time
23 period you weren't really looking at the line items in your
24 portfolio very closely.

25 How about in 2010? Have you increased the amount of

E6qbttag4

Temkin - direct

1 sort of review that you do to account statements?

2 A. Yes.

3 Q. And why is that?

4 A. Because now we were really, like, terrified and had to see
5 what was going in and what was coming out.

6 Q. All right. In regard to the rest of this letter, is this
7 essentially instructions that you lay out to Mr. Tagliaferri

8 --

9 A. Yes.

10 Q. -- regarding your account?

11 A. Yes, sir.

12 Q. If we could, on numbered paragraph 1, if you could just
13 read that last sentence to the jury about "We have gone
14 back..."

15 A. "We have gone back and forth for over two months on the
16 missing \$42,000 and I still do not have an answer. Please
17 resolve this at this time."

18 Q. Now let's take a look at what I believe is in evidence as
19 Government Exhibit 1457. You have both the paper copy and it's
20 on the screen, too.

21 A. Yes.

22 Q. Okay. So who's this from?

23 A. This is from James Tagliaferri to me.

24 Q. And what's the date of this e-mail exchange?

25 A. February 8, 2010.

E6qbttag4

Temkin - direct

1 Q. Okay. So this is a few days after that fax that we looked
2 at?

3 A. Yes.

4 Q. All right. And so what does he say-- what does he say at
5 the beginning? What's the first line?

6 A. "Susan, I am in receipt of your fax of February 5th."

7 Q. And go ahead and read the second line.

8 A. "First, let's clarify a few things. We've been managing
9 your money since 2001. I will send you the performance of the
10 accounts within a day or two. It's been quite good."

11 Q. All right. And read the next sentence, please.

12 A. "Second, we didn't begin to invest in IEAH until late
13 2007."

14 Q. Let me stop you there for a moment.

15 MR. COWLEY: Ms. Baskin, if I could have a split
16 screen, please, between this exhibit and page 16 of Government
17 Exhibit 1000.

18 Q. Again, do you recognize Government Exhibit 1000 being your
19 March 2007 statement?

20 A. Yes.

21 Q. And going down to the bottom, "Disbursement," do you see
22 \$100,000 out for the purchase of an IEAH note?

23 A. Yes.

24 Q. And that's in March 2007?

25 A. Yeah.

E6qbttag4

Temkin - direct

1 MR. COWLEY: If we can go back to just 1457, please.

2 Q. And let's go on. If you can read the rest of that
3 paragraph that Mr. Tagliaferri writes to you.

4 A. He says, "We didn't begin to invest in IEAH until late
5 2007. Most of IEAH's investments were in the second half of
6 2008. We have not bought another since. The total amount
7 invested in IEAH was 485,000. Based upon the current value of
8 your two portfolios combined, the percent in IEAH is 36
9 percent, not 75 percent. This does not include any
10 distributions you received from Pegasus on the horses or the
11 values of Big Brown, Kip Deville and Shaggy Mane in which you
12 hold minor fractional interests. We estimate the net value of
13 your Pegasus holdings at about 50,000."

14 Q. And let's skip down. Do you see a paragraph that says --
15 it starts out with "There is not a 'missing' \$42,000..."?

16 A. Yeah.

17 Q. Could you read that paragraph to the jury, please?

18 A. "There is not a 'missing' \$42,000. Originally, you held a
19 \$92,000 note. You informed us on April 14th you needed \$30,000
20 to pay taxes. We were able to sell \$50,000 of the \$92,000. We
21 wired \$35,000 to US Bank; \$15,000 was deposited in the account.
22 \$42,000 remains in escrow. We described this transaction
23 several times. We will ask for the \$42,000 to be redelivered.

24 Q. Okay. So there's sort of a lot of description of
25 transactions in this paragraph. The bottom line, where does he

E6qbttag4

Temkin - direct

1 say your \$42,000 is?

2 A. In escrow.

3 Q. Did that strike you as odd?

4 A. I don't know what it means now. Yes, odd.

5 Q. And what instructions does he make-- what does he say about
6 what he's going to do with regard to your \$42,000?

7 A. Ask for it to be redelivered.

8 Q. Do you know one way or another if your \$42,000 was sitting
9 in escrow at the time?

10 A. I did not know it was sitting in escrow at the time.

11 Q. Sitting here today, do you know one way or another whether
12 it actually was?

13 A. No.

14 Q. And just to clean one thing up real quickly. Going back up
15 to the second paragraph, the reference to "485M," and I think
16 we see "50M," did you understand that to be his notation for a
17 thousand?

18 A. Yes.

19 Q. So he wasn't saying \$485 million?

20 A. No.

21 Q. All right. Now let's take a look, if we could-- so this is
22 February 8th, 2010, is that correct?

23 A. That's correct.

24 Q. Let's take a look now at Government Exhibit 1458, please.

25 All right. And do you see this as an e-mail exchange involving

E6qbttag4

Temkin - direct

1 you and Mr. Tagliaferri?

2 A. Yes, I do.

3 Q. All right. Let's start off with the bottom e-mail, which I
4 think is sent on March 9th, 2010, at 11:47 p.m. Who sends that
5 e-mail?

6 A. It is from me.

7 Q. And who are you writing to?

8 A. To Jim.

9 Q. And could you read your e-mail to him, please?

10 A. "The State Street statements for February arrived, and
11 still no sign of the \$42,000 and the Geomas note remains
12 outstanding.

13 "Also, there remains a subordinated note for \$150,000
14 and I can't discern whose note it is (this note has appeared
15 for quite some time).

16 "I trust that the IEAH deal will close on the 12th.
17 Please advise."

18 Q. Are you asking about the same \$42,000 that we saw you
19 asking about in previous correspondence?

20 A. Yes.

21 Q. And in regard to that reference to a subordinate note for
22 \$150,000, what information are you trying to get from
23 Mr. Tagliaferri regarding this?

24 A. Why it hadn't been repaid.

25 Q. Well, is that right? Okay. Are you asking -- you can't

E6qbttag4

Temkin - direct

1 discern what the note-- what note it is?

2 A. That, and I was waiting for it to be repaid.

3 Q. And does he respond to your e-mail?

4 A. Well, his response is that tomorrow Geomas-- or the next
5 day, the 10th-- that would be the 11th, that Geomas proceeds
6 are to be credited and that IEAH was still on track.

7 Q. And do you respond to him?

8 A. Yes. "Thank you. Please let me hear from you on Friday."

9 Q. Okay. So this is on March 10, 2010, is that correct?

10 A. Correct.

11 Q. All right. Now let's go to Government Exhibit 1459, which
12 I believe is in evidence. Okay. So let's start down at the
13 bottom. I think we see-- I'm sorry, this appears to be the
14 same document. If you'd give me a moment.

15 Here we go. Yeah, 1459. There we go. Great. All
16 right.

17 So if you look at the bottom e-mail, who is it from
18 and who is it to?

19 A. It's to me from Jim Tagliaferri.

20 Q. Okay. And then there's references to the Temkin Living
21 Trust and the trust for the benefit of S. Temkin. Do you see
22 that?

23 A. Uh-huh.

24 Q. And what is he saying with regard to-- what does he say
25 happened with regard to the notes?

E6qbttag4

Temkin - direct

1 A. That the Geomas notes were paid off yesterday. Temkin
2 Living Trust \$42,857.14 principal and \$18,214.34 interest.

3 MR. COWLEY: If we could go now to Government Exhibit
4 1000, page 211, please. All right. And if we could highlight
5 the second and third. That's fine.

6 Q. Okay. So these are your account statements for what month?

7 A. March 12, 2010.

8 Q. And you, in fact, see that receipt of cash that's
9 referenced in Mr. Tagliaferri's e-mail?

10 A. I do.

11 Q. All right. So how much money comes in in two different
12 transactions on the 12th?

13 A. \$42,857 and change and \$18,214 and change.

14 Q. Ms. Temkin, if you learned that the money used to make
15 these payments to you had come from other TAG client accounts,
16 what would have been your reaction?

17 A. I would have been outraged really.

18 Q. Would you have continued to give Mr. Tagliaferri control
19 over your portfolio?

20 A. No, I wouldn't have because he clearly wasn't-- wasn't
21 doing what we asked.

22 Q. Why would you have been outraged? Explain to the jury what
23 you would find troubling about that.

24 A. I find troubling that clearly there was some arrangement
25 that Mr. Tagliaferri had with some of his other companies.

E6qbttag4

Temkin - direct

1 Q. Let me focus you, if I could, just on the issue of the
2 money being used to make these payments to you having come from
3 other clients' accounts. If that is something that had
4 happened and if you had learned that at the time, explain to
5 the jury why you would find that issue troubling.

6 A. Because I would have lost total trust in him. I mean, I--
7 and I would have been worried about what he was doing with my
8 money if he's taking it from someone else to rob Peter to pay
9 Paul. So unethical.

10 Q. Let's shift now and talk some more about Fund.com. So I
11 think this statement that we're looking at is from March 2010.
12 So let's continue to move forward chronologically and go to May
13 2010. If we could have you take a look at Government Exhibit
14 1460, which I believe should be in evidence. Okay.

15 Is this another e-mail exchange that you recognize
16 between yourself and Mr. Tagliaferri?

17 A. Yes, I do.

18 Q. And what's the date of this e-mail exchange?

19 A. May 2, 2010.

20 Q. All right. Let's start with the bottom and the first
21 e-mail you write to Mr. Tagliaferri. What do you ask of him?

22 A. I'm sorry, do you mean the first section?

23 Q. Yes. If you go down to the bottom, do you see an e-mail on
24 May 2nd, 2010, at 12:07 p.m.?

25 A. Yeah. "I know this is a hypothetical question but I'm

E6qbttag4

Temkin - direct

1 crazed. If I traded out IEAH stock/notes for Fund.com, and
2 sold Fund.com immediately, can you tell me what my overall
3 gain/loss picture would be?"

4 Q. Now, explain why you're interested in talking about somehow
5 trading out IEAH stock for Fund.com. Why is that something
6 you're interested in speaking about?

7 A. Because Mr. Tagliaferri suggested to me that if the
8 Fund.com-- that there would have been worth-- that Fund.com had
9 some value. And that if I traded out IEAH for Fund.com, I
10 would have been able to regain some money.

11 Q. Were you interested in getting out of IEAH at this time?

12 A. Yes.

13 Q. And what does Mr. Tagliaferri write back to you?

14 A. He said "If we exchange IEAH for Fund.com, your profit
15 would be about \$110,000."

16 Q. I guess the e-mail says FNDM. Did you understand that just
17 to be a short acronym for Fund.com or an abbreviation for
18 Fund.com?

19 A. Yes, I did.

20 Q. And then what else does he tell you about Fund.com?

21 A. That it "Gives us a good backstop. However, to alleviate
22 your concern, we must begin to sell Fund.com and then make the
23 exchange for IEAH. Keep in mind Fund.com is a thin stock and
24 must be sold very carefully."

25 Q. And what do you advise him at the top? Just that top

E6qbttag4

Temkin - direct

1 e-mail, if you could read it to the jury.

2 A. Oh. "Please don't do anything until we speak. I have some
3 more questions."

4 Q. And this sort of notion of substituting or subbing in
5 Fund.com for IEAH, do you recall if it was your idea or
6 Mr. Tagliaferri's idea?

7 A. No, Mr. Tagliaferri's.

8 Q. Did this possible transaction ever take place, to your
9 knowledge?

10 A. No, it didn't take place.

11 Q. And do you recall if Mr. Tagliaferri gave you an
12 explanation why he was not able to execute that transfer?

13 A. Yeah.

14 Q. What did he say to you?

15 A. Well, you see here where it says it's "a thin stock"? I
16 didn't know what that meant. But he said that there had been a
17 large position of Fund.com sold previously, a few days before,
18 and that I'd have to wait until the stock price came back up
19 again to make this happen.

20 Q. So in regard to that large sale of Fund.com that he
21 mentioned, did he explain to you what impact that large sale of
22 Fund.com had had on the market price of Fund.com?

23 A. No, but I assume that Fund.com was very low because of this
24 big sale that had happened, this change in position.

25 Q. Let me ask that again.

E6qbttag4

Temkin - direct

1 Was there a discussion that you had with
2 Mr. Tagliaferri where he advised you whether or not the market
3 price of Fund.com had dropped because of this large sale?

4 A. I don't remember.

5 Q. Okay. But, nevertheless, he advised you that because there
6 was recently a large sale of Fund.com, he couldn't make that
7 switch for you, is that correct?

8 A. We had to wait.

9 Q. Now, as 2010 progressed, did things get better or worse
10 generally in terms of how your portfolio was doing?

11 A. Well, it got worse. I mean, it's just...

12 Q. Let's go to some correspondence a little later in 2010.
13 Take a look at Government Exhibit 1467. Okay. This is
14 actually the beginning of 2011, is that correct?

15 A. Yes, January.

16 Q. Okay. And so let's look at the bottom e-mail.

17 Can you read that e-mail that you sent to
18 Mr. Tagliaferri?

19 A. On January 4? "We've asked many times, but would you
20 please explain what the mortgage sub note is for \$150,000 which
21 appears on our November statement?"

22 Q. And what does he respond?

23 A. "It's part of a \$50,000 (sic) mortgage on a property in
24 Long Island. Please take the time to point out to me where you
25 inquired about this asset."

E6qbttag4

Temkin - direct

1 Q. Have we looked at previous correspondence today where you
2 inquired about that?

3 A. Yes.

4 Q. And what do you write back to him?

5 A. "On numerous phone conversations we have questioned this
6 asset. How much for this asset today? Is it in default? What
7 about all other assets? How much are you going to give us
8 today?"

9 Q. Did you come to learn whose mortgage that note that you had
10 been invested in was related to?

11 A. Yes, we did.

12 Q. Whose was it?

13 A. It was for a house on Long Island that belonged to Mike
14 Iavarone, who was a partner of Mr. Tagliaferri's.

15 Q. Do you recall that Mr. Iavarone was affiliated with IEAH?

16 A. He was affiliated with IEAH.

17 Q. And you understood his connection with Mr. Tagliaferri to
18 be through IEAH?

19 A. Yes, I did.

20 Q. What was your reaction upon eventually learning that that
21 note was related to an IEAH officer?

22 A. I suppose the first reaction was disbelief and the second
23 reaction was why is he taking my money and giving it to a guy
24 he works with to buy a house on Long Island, or wherever?

25 Q. From 2007 to 2010, I want to talk about sort of how your

E6qbttag4

Temkin - direct

1 account changed. We'll start actually in 2000. About how much
2 money did you start out with under Mr. Tagliaferri's control?

3 A. About a million dollars. A million plus. A little.

4 Q. And during that time period, I think you said there was
5 monthly withdrawals that you were making to live on, is that
6 correct?

7 A. Yes.

8 Q. All right. And for some of the securities that you held,
9 you did make some money, like White Energy, for example?

10 A. Yes.

11 Q. And there were some payments relating to purse winnings and
12 things like that at IEAH, correct?

13 A. Yes.

14 Q. At the end of the day, 2011 time period, how much money
15 would you estimate approximately that you lost by virtue of the
16 investments that you had in that Tagliaferri-controlled
17 account?

18 A. About \$830,000.

19 Q. Did you eventually transfer that account to another
20 institution and remove Mr. Tagliaferri as investment advisor?

21 A. Well, I think there was a letter that we sent to State
22 Street saying that he was no longer allowed to trade or do
23 anything with any of our properties, what we had. And
24 eventually we were able to take it to another firm.

25 Q. And did you have occasion to reach out and ask that firm

E6qbttag4

Temkin - direct

1 for the actual physical copies of the securities that had been
2 sitting in State Street?

3 A. Actually, State Street sent them to this other firm and
4 they then sent them to me.

5 Q. Let's take a look, if you could, at Government Exhibit
6 1471, which should be in your Redweld. Do you have that paper
7 copy there, by any chance?

8 A. Oh, sorry. 1471? Yes. Yes, I have it.

9 Q. Is this a copy of the securities that were sitting in your
10 State Street account that had been transferred?

11 A. Yes. Yes, they were.

12 Q. And this was a letter, a cover letter, where you were
13 receiving a copy of those securities?

14 A. Yes.

15 MR. COWLEY: Your Honor, I move to admit Government
16 Exhibit 1471.

17 THE COURT: Any objection? It will be admitted.

18 (Government's Exhibit 1471 received)

19 MR. COWLEY: If we may publish to the jury.

20 THE COURT: You may.

21 MR. COWLEY: Thank you, your Honor.

22 Q. And, again, back when Mr. Tagliaferri had been managing
23 your account, did you see any need to obtain the physical
24 copies of stock and stuff like that that were being held by the
25 custodian?

E6qbttag4

Temkin - direct

1 A. No.

2 Q. So let's take a look here. What are the four securities
3 that are referenced?

4 A. Two are Conversion Services International and two are
5 International Equine Acquisitions, which is IEAH.

6 Q. And just going through, let's take a look at what some of
7 these physical securities look like.

8 MR. COWLEY: If we could go to the next page.

9 Q. So does this appear to be a stock certificate for
10 Conversion Services International?

11 A. Yes.

12 Q. And it was only January 14th. This is the first time
13 you're physically seeing these, is that correct?

14 A. Yes.

15 Q. And then, to the next page, that's also Conversion Services
16 International, is that right, Ms. Temkin?

17 A. That's right.

18 Q. And then the next page.

19 A. This is a mortgage sub note for the Iavarones' house.

20 MR. TULMAN: If we could highlight the second
21 paragraph from the bottom.

22 Q. Do you see the reference to Michael and Christine Iavarone?
23 Is that when you came to learn that this note was affiliated
24 with an IEAH officer?

25 A. I may have known it a little bit before, perhaps through my

E6qbttag4

Temkin - direct

1 brother maybe, but this is the first time I ever saw it on
2 paper that it was theirs.

3 MR. COWLEY: And then to the next security, please.

4 Q. Is this an IEAH sub note?

5 A. Yes.

6 Q. All right. And do you see a reference here to it being,
7 let's see, related to a note dated July 13th, 2007, issued by
8 Maker to TAG Virgin Islands?

9 A. Yes.

10 Q. Was that master note between TAG Virgin Islands and Maker
11 in your account or was the sub note in your account?

12 A. It was a sub note in my account.

13 Q. And who signs this sub note?

14 A. Jim Tagliaferri.

15 Q. All right. And do we see another IEAH sub note, going to
16 the next page?

17 A. Yes.

18 Q. And another one, and another one. Go to the last one.
19 Does this appear to be that \$150,000 mortgage sub note?

20 A. \$150,000, yeah.

21 MR. COWLEY: If I could have a moment, your Honor.

22 THE COURT: Sorry?

23 MR. COWLEY: If I could have a moment.

24 THE COURT: Yes, of course.

25 (Pause)

E6qbttag4

Temkin - direct

1 MR. COWLEY: No further questions.

2 THE COURT: Mr. Tulman, do you have any
3 cross-examination?

4 MR. TULMAN: Yes, your Honor.

5 THE COURT: Go ahead.

6 CROSS-EXAMINATION

7 BY MR. TULMAN:

8 Q. Good afternoon, Mrs. Temkin.

9 A. Good afternoon, sir.

10 Q. Your husband's name is Victor?

11 A. Yes.

12 Q. Okay. And your husband was an attorney?

13 A. Yes.

14 Q. Okay. And your husband, in fact, was a former prosecutor?

15 A. Yes.

16 Q. When you were reviewing statements, were you reviewing
17 these statements with your husband?

18 A. Sometimes.

19 Q. Did you and your husband discuss things about these
20 statements?

21 A. Yes.

22 Q. Did you-- you have a son named Jeremy?

23 A. Yes.

24 Q. And your son Jeremy is also an attorney?

25 A. Yes.

E6qbttag4

Temkin - cross

1 Q. And he is an attorney with a very good reputation?

2 A. Yes.

3 Q. And you have a son named Andrew?

4 A. Yes.

5 Q. And your son Andrew is an equestrian, is involved with
6 horses?

7 A. Well, he's an attorney also.

8 Q. Oh, okay.

9 A. He's involved with horses just as a hobby.

10 Q. Just as?

11 A. A hobby.

12 Q. As a hobby. Okay.

13 Did there come a time that your husband wrote a letter
14 to Jim Tagliaferri telling Jim Tagliaferri that your son Andrew
15 wanted to be like him?

16 A. Wanted to be like him?

17 Q. That your son Andrew wanted to be like Jim Tagliaferri.

18 MR. COWLEY: Objection.

19 A. I don't know. I don't know.

20 THE COURT: I'll allow it.

21 A. I'm sorry, I don't know.

22 Q. If I showed you a letter, would that refresh your
23 recollection?

24 A. Sure.

25 Q. Okay. Actually, I may not have it here.

E6qbttag4

Temkin - cross

1 Now, as you sit here today --

2 THE COURT: If you could just speak into the
3 microphone, please. Thank you.

4 MR. TULMAN: Am I-- thank you, your Honor.

5 Q. Would it be fair to say, Mrs. Temkin, that as you're
6 sitting here today that you're very, very angry at
7 Mr. Tagliaferri?

8 A. Yes.

9 Q. Okay. Do you hold him responsible for the losses in your
10 account?

11 A. Yes.

12 Q. When you testified earlier in response to Mr. Cowley's
13 questions, he asked you a series of questions starting with "If
14 you learned that," and then he would say something and then he
15 asked you how you would feel about it.

16 Do you remember all of those questions?

17 A. I do.

18 Q. Okay. Do you know whether any of those things are true of
19 your own personal knowledge?

20 A. I'm sorry, I don't understand the question.

21 Q. Sure. For example, Mr. Cowley said if you learned that
22 Mr. Tagliaferri had been taking money from one client in order
23 to pay you, would you be upset with that? Do you remember that
24 question?

25 A. Yes.

E6qbttag4

Temkin - cross

1 Q. Okay. Do you know of your own personal knowledge whether
2 that ever happened?

3 A. I'm not sure.

4 Q. You're not sure. You don't know whether that happened or
5 not?

6 A. I'm not sure.

7 Q. So if I understand your testimony correctly then, if that
8 were true, then you would be upset?

9 A. That's right.

10 Q. Okay. Now, you mentioned in response to the questions from
11 the prosecutor, Ms. Temkin, that you received distributions on
12 a regular basis from the Tagliaferri accounts?

13 A. Yes.

14 Q. And you were receiving that from the time that you started
15 with the account, when you first opened your account with
16 Mr. Tagliaferri?

17 A. I think so.

18 Q. Okay. And was it a fact that for a number of years you
19 received quarterly distributions of \$10,000?

20 A. I think I received the quarterly distributions in the
21 beginning.

22 Q. And then there came a time that you changed that
23 instruction and told Mr. Tagliaferri that you didn't want
24 quarterly \$10,000 distributions; every month you wanted
25 \$10,000, correct?

E6qbttag4

Temkin - cross

1 A. We had retired, yeah.

2 Q. And was there ever a time that Jim Tagliaferri told you
3 that you just don't have the \$10,000 liquid in your account to
4 give to you?

5 A. I don't remember.

6 Q. Was there ever a time that you didn't receive your \$10,000
7 monthly check?

8 A. I think towards the end I didn't.

9 Q. Were there times when you received more than \$10,000 and
10 you told Jim, I don't want the \$20,000, I just want the
11 \$10,000?

12 A. That was a bank mistake.

13 Q. He gave you too much money?

14 A. The bank gave us too much money.

15 Q. I'm sorry. The bank gave you too much money that month and
16 you asked Mr. Tagliaferri to correct that?

17 A. And to put it back.

18 Q. And to put it back into your account.

19 A. That's right.

20 Q. Okay. And you said that you lost \$830,000, correct?

21 A. Correct.

22 Q. You started with about a million dollars?

23 A. Yes.

24 Q. And you say you lost about \$830,000, correct?

25 A. Yes.

E6qbttag4

Temkin - cross

1 Q. But isn't it a fact that if you added up all the money that
2 had been given to you over the years, that you received
3 approximately \$650,000 that you had received over the years
4 from the Tagliaferri accounts?

5 A. I don't know if that number is right.

6 Q. Okay. Well, you received \$10,000 a month, correct, and
7 that was for a period of years?

8 A. Yes.

9 Q. So that would be \$120,000 a year that you were getting?

10 A. Yeah.

11 Q. And you received that for a period of years, correct?

12 A. Yes.

13 Q. So if you were to deduct the-- well, you don't know how
14 much money you actually had received over all of those years,
15 but it was a substantial amount, correct?

16 A. Yes.

17 Q. Okay. Now, you started with a million dollars you said,
18 correct?

19 A. A little more.

20 Q. A little bit more.

21 And when you were shown statements by the government,
22 your account said it was \$1.3 million. Do you recall seeing
23 the statements?

24 A. Yes, but I added money to that.

25 Q. How much money did you add?

E6qbttag4

Temkin - cross

1 A. I added \$175,000 to the original amount that I received.

2 Q. Okay. So it was more in terms of additional investments.
3 I take it that you had, apart from the monies that you had in
4 that account, that was not your life savings? Withdrawn.

5 You had other monies -- separate and apart from what
6 you had entrusted to Mr. Tagliaferri, you had other monies
7 apart from those monies, correct?

8 A. Correct.

9 Q. Okay. Now, you say that you learned about this company,
10 IEAH, only when you received a call from your sister-in-law?

11 A. That's correct.

12 Q. And your sister-in-law is your brother Doug Lamm's wife?

13 A. Correct.

14 Q. And she told you at that time that you were a partial owner
15 of Big Brown?

16 A. Correct.

17 Q. Prior to that time, had you had any interest in horse
18 racing?

19 A. No.

20 Q. Okay. When you learned that Mr. Tagliaferri had invested
21 your monies in this company, were you angry?

22 A. No, because his assurances were that they were good.

23 Q. And what was it when you learned of this-- could you tell
24 me what you did when you learned that from your sister-in-law,
25 that Mr. Tagliaferri had actually invested you in this company

E6qbttag4

Temkin - cross

1 which was now-- and that you were a fractional owner or partial
2 owner of Big Brown? What did you do?

3 A. It was exciting.

4 Q. It was exciting?

5 A. Yeah.

6 Q. Why was it exciting?

7 A. Because Big Brown was such a big name and there was so much
8 excitement about the horse in the press and in, I think, all of
9 the, I guess, Belmont and the Preakness and the races, that he
10 could have potentially been a Triple Crown winner. That was
11 it. There was excitement generated. And because Jim had said
12 this was safe.

13 Q. And when Jim said that this was safe, did he explain to you
14 why he thought it was safe?

15 A. I don't remember.

16 Q. If you remember. If you remember. If you don't --

17 A. I don't remember.

18 Q. Do you remember him talking about the value of Big Brown,
19 how many millions of dollars that horse could gain?

20 A. I'm not sure. I don't remember.

21 Q. Okay. Now, in fact, there came a time that you actually
22 went to the racetrack?

23 A. I did.

24 Q. You went to the racetrack in California?

25 A. I did.

E6qbttag4

Temkin - cross

1 Q. There was another horse that was running there that was
2 named Pure Clan. Do you remember that?

3 A. I remember that.

4 Q. It was an exciting time?

5 A. Sure.

6 Q. You were happy to be an owner of horses at that time?

7 A. I was never happy to be an owner of horses. From the time
8 that we began to be owners of horses, we were nervous. And my
9 husband said to me "This isn't where we belong. It's the sport
10 of kings because that's who can afford it. We can't afford
11 this. This isn't for us."

12 Q. And you remember the government showing you a document from
13 September of 2008?

14 MR. TULMAN: One moment, please.

15 (Pause)

16 Q. All right. Now, do you recall reading this letter in
17 September of 2008?

18 A. Yes, I do.

19 Q. Okay. And at that time in September of 2008, when you
20 received this letter, you learned that the note that you had in
21 IEAH was now being converted into stock?

22 A. Which paragraph are you looking at now, please?

23 Q. Where it says-- you know what? Withdrawn. This is not the
24 right letter. But let me ask you-- since this is up, let me
25 ask you some questions. Okay.

E6qbttag4

Temkin - cross

1 It says, at the bottom, where it says "For the
2 record," you see that Mrs. Temkin?

3 A. Yes, sir.

4 Q. And do you see where it says that "This raises the
5 potential for a conflict of interest"?

6 A. I do.

7 Q. And do you see where it says that "I" -- meaning
8 Mr. Tagliaferri -- "would be happy to discuss these
9 arrangements at your convenience"?

10 A. Yes.

11 Q. So did you ever call him to ask for the specific
12 information about this potential conflict of interest?

13 A. My money was gone.

14 Q. At this point --

15 A. And IEAH was invested. This was water over the bridge.
16 No, I didn't call to ask because it was done. It was a done
17 deal.

18 Q. And when you say "it was a done deal," meaning your money
19 had been invested?

20 A. Right.

21 Q. And there was nothing you could really do about these
22 monies anymore, right?

23 A. Right.

24 Q. Were you angry with Mr. Tagliaferri at this point in
25 September of 2008 for having received these monies?

E6qbttag4

Temkin - cross

1 A. I was locked in. I felt locked in. That's how I felt.

2 Q. Did you ever consider at this point in time, in September
3 of 2008, discharging him?

4 A. No, because we kept hoping it would get better.

5 Q. You trusted him?

6 A. Yeah. We kept hoping, and he encouraged us. He said
7 "Things are safe. They're really okay. Don't worry. Please,
8 don't worry." And so-- and then, you know, three months later
9 or five months later, we considered it again. Maybe we should
10 get rid of him. But it kept going down so we were locked in.

11 Q. Now, when you say that you felt "locked in," in the months
12 prior to the time that you received this letter, were you, in
13 fact, really excited and happy with the fact that you had been
14 invested in this company, IEAH?

15 A. The amount of time we were excited and happy was very
16 short-lived, because when we realized what was going on, I then
17 began to say I'm concerned. You know, you've seen these notes.
18 I'm very concerned. Please, we wanted to be in secure things.
19 We don't want to be in illiquid positions.

20 And so we were excited, yeah, in the beginning, but it
21 was soon thereafter that we began to not be excited.

22 Q. Did you ever send a message-- you said earlier, you
23 testified that you had actually attended a race in California.

24 A. Yeah.

25 Q. And that was a race with Pure Clan.

E6qbttag4

Temkin - cross

1 A. Right.

2 Q. And Pure Clan is a horse, right?

3 A. Yes.

4 Q. And Pure Clan actually won that race?

5 A. Yes.

6 Q. And you actually were in the winner's circle on that day?

7 A. Yeah.

8 Q. And did you ever write an e-mail to Mr. Tagliaferri telling
9 him what an extraordinary day that you had had?

10 A. Yes.

11 Q. And did you tell him that it was too bad that you had to be
12 at a wedding on August 16th because you would have wanted to
13 watch Pure Clan run again in Del Mar?

14 A. Yes.

15 Q. Did you ask him for a copy of the photo of you at the
16 winner's circle?

17 A. Sure.

18 Q. Okay. And would that have been in around July of 2008 when
19 you were at that race?

20 A. I don't know. I have to-- you'd have to give me the, you
21 know...

22 Q. Sure. Let me --

23 A. Is there some documentation?

24 Q. Yes.

25 A. Thank you. This was July 2008.

E6qbttag4

Temkin - cross

1 Q. All right.

2 A. Yes.

3 Q. So that's correct, that it was in July of 2008?

4 A. Yes.

5 Q. Okay. And in late July of 2008, do you recall

6 communicating with Mr. Tagliaferri to tell him that you on your
7 own were going to Del Mar and did you ask if we have any horses
8 running on that date?

9 A. Probably.

10 Q. Do you need to have-- would you like to have your
11 recollection-- is there anything that could refresh your
12 recollection?

13 A. No. I mean that sounds reasonable.

14 Q. Okay. So on that date in July of 2008, you were going to
15 the racetrack on your own without-- in other words, you were
16 going to be at Del Mar, right?

17 A. Maybe I should see the paper.

18 Q. All right.

19 A. Thank you.

20 Q. Sure.

21 A. Okay. That was July 31st, right.

22 Q. Okay.

23 A. Right.

24 Q. So on July 31st, you were writing to Mr. Tagliaferri to ask
25 him if we have any horses running on that day?

E6qbttag4

Temkin - cross

1 A. Right, correct.

2 Q. Because at that time, in July of 2008, when you say "we,"
3 you were part of the IEAH team at the time?

4 A. Correct.

5 Q. And when you testified earlier that you were very excited
6 about being-- for a time, for a short time, this was the time
7 period when you were very excited about being involved with
8 IEAH, correct?

9 A. Correct.

10 (Continued on next page)

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E6qdtag5

Temkin - cross

1 Q. Do you recall sending another email to Mr. Tagliaferri in
2 early August of 2008, telling him that you saw the race
3 yesterday and it was very exciting and heart-stopping? Do you
4 remember that?

5 A. Yes.

6 Q. OK. Did you say to him, "One more win for our team?"

7 A. Perhaps I did.

8 Q. Would you like to see anything that would refresh your
9 recollection specifically?

10 A. No. If you are looking at it reading it, then that's fine.

11 Q. So does this refresh your recollection that that's what you
12 said, that it was another win for the team, for our team?

13 A. Right.

14 Q. And you asked about when Pure Clan was racing again, right?

15 A. Right.

16 Q. OK. And this is in early August of 2008?

17 A. Right.

18 Q. And so now at this time -- at this time -- was this the
19 time that you also had reservations about being invested in
20 IEAH?

21 A. Sure.

22 Q. And so there came a time in early September of 2008 when
23 you had to make a decision whether or not to sign up as a
24 shareholder in IEAH. Do you recall that?

25 A. No, I don't recall that.

E6qdtag5

Temkin - cross

1 Q. OK. Let me back up.

2 (Pause)

3 I would just like to get a document that we had
4 before, your Honor.

5 (Pause)

6 THE COURT: Just while you're waiting, I will just let
7 you know that I have a transcript of the trial here. So
8 sometimes you will see me look at my screen, and every once in
9 a while it is not working. So we don't mean to distract you
10 here.

11 (Pause)

12 BY MR. TULMAN:

13 Q. Do you recall becoming involved with a company that was
14 called Pegasus?

15 A. Yes.

16 Q. And Pegasus was a limited liability corporation that was
17 formed to own the various horses in which you had a fractional
18 interest?

19 A. Yes.

20 Q. And that company was a company that was managed by who, if
21 you know?

22 A. I guess, Mr. Tagliaferri and Mr. Iavarone.

23 Q. In order to become involved with this company Pegasus, did
24 you have to sign any paperwork, that you recall?

25 A. I don't remember.

E6qdtag5

Temkin - cross

1 Q. Let me show you a document.

2 THE COURT: Is this something that is in evidence?

3 MR. TULMAN: Yes, it is, your Honor. It's Government
4 Exhibit 1451A.

5 Q. Now, I am going to show you this document.

6 A. Mm-hmm.

7 Q. And for everybody to read.

8 And this is a letter in which Mr. Tagliaferri is
9 asking you to confirm the accuracy of representations that were
10 made regarding your being an accredited investor. Is that
11 correct?

12 A. Correct.

13 Q. OK. And if I turn to the next page, it defines an
14 accredited investor as "any natural person whose individual net
15 worth or joint net worth with that person's spouse at the time
16 of his" -- or her, I suppose -- "purchase exceeds \$1 million."

17 A. I see that.

18 Q. OK. Would that be a fair statement, that that would have
19 described you and your husband at that time?

20 A. Are you talking about the amount of money that we had with
21 Mr. Tagliaferri at that time?

22 Q. No, not just with Mr. Tagliaferri. Just your total monies.

23 A. Yes. The answer is yes.

24 Q. OK. And so, in fact, if I turn to the next page, then --
25 withdrawn.

E6qdtag5

Temkin - cross

1 If I turn to the first page, is that your signature on
2 the bottom of that page?

3 A. It is.

4 Q. So what you did is you confirmed the accuracy of the
5 representation that you are an accredited investor?

6 A. Correct.

7 Q. OK. And if I show you exhibits to this, what it indicates
8 is that you had made a capital contribution and that you had an
9 interest in this horse as an owner of Shaggy Mane, correct?

10 A. Correct.

11 Q. And you signed that on the bottom?

12 A. I did.

13 Q. As did your husband?

14 A. He did.

15 Q. And with respect to this Series E, you signed the document
16 that you are a fractional owner of a horse named Kip Deville,
17 correct?

18 A. Correct.

19 Q. And you signed another document, which was Exhibit A,
20 Series C, which indicated that you are a fractional owner of
21 Big Brown?

22 A. Correct.

23 Q. Big Brown at this point in time was a horse that had won
24 the Kentucky Derby, correct?

25 A. I don't know the dates. I mean, when was the Kentucky

E6qdtag5

Temkin - cross

Derby?

Q. Well, do you know when the -- do you know when Big Brown won the Kentucky Derby?

A. In 2008. But this is as of July -- whatever the date is on this document. I don't know if the Kentucky Derby had run then or if this was before or after.

Q. OK. You knew that Big Brown had won the Preakness --

A. Yes.

Q. -- by this time?

A. OK.

Q. If you didn't know --

A. I honestly don't know the dates of the races on this.

Q. OK. It says on the document, do you see that your capital contribution for Big Brown is based on "breeding contract as of July 1st of 2008?"

A. I do.

Q. Did you understand the significance of having a breeding contract?

A. No.

Q. Did you know anything at all at that time about the value of what Big Brown would be?

A. No.

Q. Did you ever call Mr. Tagliaferri to ask him what the value was before you decided to become --

A. No.

E6qdtag5

Temkin - cross

1 THE COURT: We should probably take a break shortly,
2 but you tell me when it is a good time. OK?

3 MR. TULMAN: OK.

4 Q. Now, with respect to the letter of September 2nd of 2008,
5 which talked about -- the potential conflict of interest
6 letter, do you recall in that letter it telling you that you
7 had received a distribution of \$5,825?

8 A. Yes.

9 Q. OK. Did there come a time on September 11th of 2008 that
10 you sent an email inquiring about the \$5,825.99 that was
11 referred to in that letter?

12 A. I'd have to --

13 Q. Do you recall?

14 A. I don't recall. I'd have to see it.

15 Q. Sure.

16 (Pause)

17 A. Thank you.

18 Yes.

19 Q. Now, on September 11th of 2008, you told Mr. Tagliaferri
20 that you had just reread the letter of September 2nd, and you
21 saw that that amount of \$5,825.99 was deposited in State Street
22 Bank, correct?

23 A. Correct.

24 Q. And you told him that there was, therefore, no need to
25 answer your earlier emails regarding the \$5,800, correct?

E6qdtag5

Temkin - cross

1 A. Correct.

2 Q. You were concerned to make sure that the \$5,825.99 made its
3 way wherever it was supposed to be, correct?

4 A. Correct.

5 Q. OK. But your testimony was that you really weren't even
6 looking at your statements to see where all of your other
7 monies were at that time, correct?

8 A. We were beginning to look at statements, sir.

9 Q. So in 2008, you were beginning to look at statements.

10 MR. TULMAN: OK. This might be a good time for a
11 break, your Honor.

12 THE COURT: All right. Why don't we take about a
13 ten-minute break. Thanks.

14 Please remember, don't discuss the case. Keep an open
15 mind. Thank you.

16 (Recess)

17 THE COURT: Are we ready for the jury?

18 (Jury present)

19 THE COURT: You may be seated.

20 You may proceed.

21 MR. TULMAN: Thank you, your Honor.

22 BY MR. TULMAN:

23 Q. Do you need a drink of water? Are you OK?

24 (Pause)

25 I am going to show you again, Mrs. Temkin, very

E6qdtag5

Temkin - cross

1 quickly what was the Government's Exhibit 1451A. We looked at
2 it just before. OK? And I just wanted to show you one more
3 thing that I forgot. All right?

4 Do you see the first paragraph of the -- do you see
5 the first paragraph of that letter?

6 A. Yes, sir.

7 Q. OK. And it says there, does it not, that in connection
8 with the purchase of securities of IEAH, that Peg represented
9 to Pegasus, the company, that, one, you acquired the securities
10 for your own account for investment purposes only and not with
11 a view to resale or other distribution, and that, secondly,
12 that you are an accredited investor, right?

13 A. Yes.

14 Q. OK. Now, you've already answered questions about the
15 second part, in that you signed that you are in fact an
16 accredited investor?

17 A. Yes.

18 Q. Do you recall reading the first part of that letter, that
19 you understood that it was just not -- that it was not with a
20 view towards resale?

21 A. Well, I see it now more clearly than I saw it then,
22 probably. But I see it. I see it.

23 Q. OK. But when there came a time that you became concerned
24 with the investment, you decided that, notwithstanding the
25 letter, you really wanted to get your money out of IEAH,

E6qdtag5

Temkin - cross

1 correct?

2 A. Right.

3 Q. OK. Now, do you recall earlier I asked you about your son
4 Andrew being an equestrian and having as a hobby an interest in
5 horses?

6 A. Yes.

7 Q. And do you remember when I asked you earlier about -- do
8 you recall your husband writing a letter to Mr. Tagliaferri
9 saying that Andrew would really like to be in the horse
10 industry, meaning, i.e., he'd like to be like you? Do you
11 remember sending that letter?

12 A. I don't think my husband said that --

13 Q. Your husband sent him this letter?

14 A. Yeah. But I don't think my husband ever said that my son
15 wanted to be like Mr. Tagliaferri.

16 Q. OK.

17 MR. TULMAN: May I approach the witness?

18 THE COURT: You may.

19 MR. TULMAN: I am going to mark this just for
20 identification, Judge.

21 THE COURT: OK. Just note for the record what you
22 mark it as, please.

23 MR. TULMAN: Yes. I am marking this as DX1000, for
24 identification.

25 A. Thank you.

E6qdtag5

Temkin - cross

1 Q. Sure.

2 A. I see it.

3 Q. OK.

4 A. Mm-hmm.

5 Q. OK. Does this document, Mrs. Temkin, refresh your
6 recollection that your husband communicated to Mr. Tagliaferri
7 that your son Andrew would really like to be somewhere in the
8 horse industry, i.e., he'd like to be like you?

9 A. Yes.

10 Q. OK. Now, on direct examination, you testified about --
11 initially you testified that everything with Mr. Tagliaferri
12 you lost money on, correct?

13 A. Yes.

14 Q. But then you said that there were some cases where you
15 actually did make money on exchanges, correct?

16 A. Yes.

17 Q. OK. And one such example of that was a stock that was
18 called White Energy, correct?

19 A. Yes.

20 Q. OK.

21 MR. TULMAN: I would ask -- wait.

22 (Pause)

23 Your Honor, I am going to offer in evidence, as
24 Defense Exhibit 657, a State Street statement from November of
25 2005.

E6qdtag5

Temkin - cross

1 MR. COWLEY: No objection.

2 THE COURT: No objection. All right. It will be
3 admitted.

4 (Defendant's Exhibit 657 received in evidence)

5 MR. COWLEY: Could you state the number again?

6 MR. TULMAN: Sure. 657.

7 BY MR. TULMAN:

8 Q. And this is a statement from State Street, OK, that's in
9 evidence. OK.

10 And I'm going to show you the second page for a
11 moment.

12 And you said before that you had two different
13 accounts with Mr. Tagliaferri?

14 A. Yes, sir.

15 Q. OK. And in one account you had over a million dollars, and
16 that was a statement that was sent that the prosecutors showed
17 you?

18 A. Yes.

19 Q. OK. And this is the second statement, because this is the
20 account under the will of your mother, Charlotte Lamm, correct?

21 A. Correct.

22 Q. And you were a trustee on this particular account?

23 A. Correct.

24 Q. OK. And with this particular account, I'm going to turn
25 the page now from the front page to the next page, and ask you,

E6qdtag5

Temkin - cross

1 do you know -- did you know in 2005 what Headwaters, Inc. was?

2 Do you know what that company was? Just yes or no.

3 A. No.

4 Q. You don't know?

5 A. No. No.

6 Q. Did you know what Mesabi Trust was?

7 A. No.

8 Q. Did you know what Southern Copper Corp. was?

9 A. I can assume it was a copper company.

10 Q. OK. Were these the type of conservative investments that
11 you had asked Mr. Tagliaferri to put you into in 2005?

12 A. Wait. You've got to understand something. We had asked in
13 our trust for the securities to be safe and blue chip and
14 secure and liquid. This trust was for my children from my
15 parents. They were young boys.

16 Q. Mm-hmm.

17 A. And we asked for, in this account, there to be more
18 equities and be more growth because they were younger kids.

19 Q. I see.

20 A. So has nothing to do with what was in our account.

21 Q. I see. OK. So in this particular account your
22 instructions to Mr. Tagliaferri was he was to be more
23 aggressive?

24 A. Yes.

25 Q. So you gave him -- so apart from talking about a

E6qdtag5

Temkin - cross

1 conservative approach, you really had a more detailed
2 conversation with him about it, about exactly what your
3 investment goals were; is that what you're saying?

4 A. Yeah.

5 Q. OK. And so this account was going to be growth?

6 A. Yes.

7 Q. Your other account was going to be conservative?

8 A. Yes, sir.

9 Q. I see. And in retaining Mr. Tagliaferri's services for
10 these purposes, would you look at the statements to see whether
11 he was carrying out your instructions with respect to the two?

12 A. Could you -- I mean, generally.

13 Q. OK. Now, do you see down here there is something, "Foreign
14 Assets," and that's Amarok Resources?

15 A. Yes.

16 Q. Do you know what Amarok Resources was?

17 A. No.

18 Q. Do you know, did you learn that Amarok Resources later
19 changed its ownership or in acquisition it became the company
20 White Energy?

21 MR. COWLEY: Objection.

22 A. No. I didn't know.

23 THE COURT: Overruled.

24 A. I didn't know that.

25 (Pause)

E6qdtag5

Temkin - cross

1 Q. Isn't it a fact, Mrs. Temkin, that Amarok Resources later
2 becomes White Energy?

3 A. I didn't know that.

4 Q. OK. Now, did there come a time -- and now I suppose the
5 government could assist me -- the June 17th -- the June 2010
6 statement for this account that ends in 3880.

7 (Pause)

8 I think it is a State Street statement.

9 (Discussion off the record)

10 MS. MOYNE: It is in evidence.

11 MR. TULMAN: OK. And could you go, please, to the
12 sales, if you would, June of 2010. Like I guess the fourth
13 page, where there are sales. Give me a second and we will find
14 it. I think, there it is.

15 Q. In June of 2010, is it a fact that Mr. Tagliaferri, on your
16 behalf, sold White Energy for \$81,723.60?

17 A. Yes.

18 Q. And isn't it a fact that the purchase price for you of that
19 stock was \$12,255?

20 A. Where does it say that?

21 Q. Well, I'm asking you if that is --

22 A. I don't remember that.

23 Q. OK. I'm going to show you, then, the -- I have to go back
24 to the 2005 statement. So I guess if we could turn this one
25 off and turn this one back on.

E6qdtag5

Temkin - cross

1 (Pause)

2 OK. Do you see on the bottom, Amarok Resources,
3 \$12,255 at the very bottom there?

4 A. Yes, I see it.

5 Q. So I ask you again, isn't it a fact that you realized a
6 longterm capital gain from the sale of White Energy of
7 approximately -- not "approximately," of \$69,468.60?

8 A. Yes.

9 MR. COWLEY: Objection.

10 THE COURT: Overruled.

11 Q. The answer is yes?

12 A. Yes.

13 Q. OK. And this was in June of 2010, correct?

14 A. If that's what it says.

15 Q. OK. And now I'd like to show you another document, which
16 is Defendant's Exhibit 671.

17 And on June 25th of 2010, is this an email that you
18 sent to Jim Tagliaferri -- I'm sorry. I am offering into
19 evidence Defendant's Exhibit 671.

20 THE COURT: It will be admitted.

21 (Defendant's Exhibit 671 received in evidence)

22 MR. TULMAN: Thank you. Sorry.

23 OK, now I will publish it.

24 Q. Do you recall sending an email to Mr. Tagliaferri
25 June 25th of 2010, saying, "Dear Jim, just noticed the sale of

E6qdtag5

Temkin - cross

25,000 shares of White Energy. Good going. Good going. Keep going."

Do you recall that?

A. "Pretty soon we'll start sleeping at night."

Q. Yes. "Pretty soon we'll start sleeping at night."

Correct?

A. Mm-hmm.

Q. Because at that point in time you may have had the gain in White Energy but in fact you had losses, and significant losses, in other stocks at that time, correct?

A. Correct.

Q. And that was really upsetting you at the time, correct?

And because it appears at that time that Mr. Tagliaferri wasn't able to get you out of that IEAH, correct?

A. Right.

Q. And even though you had signed a statement back when you got involved with IEAH that it can't be resold, you wanted to sell it because it wasn't making money for you, isn't that right?

A. I don't understand.

THE COURT: She doesn't understand the question.

MR. TULMAN: OK. I'll break it up. I'll stop. OK.

Q. You were upset at how much money you were losing with IEAH?

A. Correct.

E6qdtag5

Temkin - cross

1 Q. You wanted out?

2 A. Correct.

3 MR. TULMAN: OK. Now, in response to this, I'm
4 offering into evidence Defendant's Exhibit 672.

5 And in response to what is in evidence as 671, which
6 is this email, I am offering in evidence --

7 THE COURT: You are offering in evidence?

8 MR. TULMAN: 672, your Honor.

9 THE COURT: All right. It will be admitted.

10 (Defendant's Exhibit 672 received in evidence)

11 MR. TULMAN: OK.

12 BY MR. TULMAN:

13 Q. So in response to the email where you told Mr. Tagliaferri
14 to keep going, having just sold 25,000 shares of White Energy,
15 I'm going to show you now what's in evidence as 672.

16 Do you recall receiving this response from
17 Mr. Tagliaferri indicating that he had sold in fact not 27,000
18 shares but 52,000 shares?

19 A. Yes. I see that.

20 Q. So when you earlier testified -- withdrawn.

21 You earlier testified about the gain of \$62,000,
22 approximately, on the sale of 27,000 shares?

23 A. Yes.

24 Q. It was more like 120,000; is that your recollection?

25 A. Between the two accounts --

E6qdtag5

Temkin - cross

1 MR. COWLEY: Objection.

2 A. -- do you mean?

3 Q. Yes, between the two accounts.

4 THE COURT: Overruled.

5 Go on. There was an objection.

6 Q. OK. So the \$67,000 was in fact, to your best
7 recollection -- to your best recollection -- more like
8 \$120,000?

9 A. Are you talking about it being divided between my
10 children's account and our account? Was that what you are
11 saying? Because did they have White Energy in their account,
12 as well?

13 Q. No, ma'am. What I'm asking -- I'll direct your attention,
14 again, Mrs. Temkin, just to Defendant's Exhibit 672.

15 Do you recall Mr. Tagliaferri selling 25,000 shares of
16 White Energy from your mother's account and then also selling
17 25,000 shares from your account?

18 A. I see that here, now.

19 Q. So the profit that you made was not 67,000 but more like
20 134,000, if you recall?

21 MR. COWLEY: The same objection.

22 THE COURT: Overruled.

23 A. I don't remember it. Sorry.

24 Q. No problem. Now, finally, you've heard testimony -- you
25 recall testifying on direct examination a whole series of

E6qdtag5

Temkin - cross

1 questions about a stock, a security called Fund.com; do you
2 remember?

3 A. Yes.

4 Q. I'd like to direct your attention, and ask the government
5 to assist me once again, to the July 2008 statement. Oh, for
6 the living trust.

7 (Pause)

8 OK. And I would direct your attention, please, to
9 page 5. Well, maybe the first page.

10 MR. TULMAN: And this is evidence, your Honor. I
11 believe it is a government exhibit, your Honor.

12 THE COURT: OK.

13 MR. TULMAN: OK.

14 Q. So in this July statement, I'll direct your attention to
15 page 6 of that statement. OK.

16 Did I say page 6? Forgive me. Page 5.

17 I'd ask you, Mrs. Temkin, if you would please look at
18 the date of July 2nd of 2008?

19 A. OK.

20 Q. OK. And did there come a time on or about July 2nd of 2008
21 that Mr. Tagliaferri, on your behalf, purchased 42,857 shares
22 of Fund.com for \$12,857.10?

23 A. Yes, sir.

24 Q. OK. And now I would like to direct your attention -- and I
25 would ask the government's assistance one last time -- for the

E6qdtag5

Temkin - cross

1 September 2009 statements for the same account. And I would
2 ask you, please, to go to page 5.

3 Mrs. Temkin, I would ask you to please direct your
4 attention to on or about between September 25th and
5 September 30th of 2009, did Mr. Tagliaferri, on your behalf,
6 sell 40,000 shares of Fund.com?

7 A. Yes.

8 Q. For the price of \$79,397.96?

9 A. Yes. I see that.

10 Q. And, by the way, were you also getting another \$10,000 at
11 that time, as indicated right below that, for a distribution?

12 A. I see that.

13 Q. Yes. And would it be fair to say, then, if you do some
14 math, that in connection with that Fund.com, given the course,
15 that you received a significant gain in that case with respect
16 to the sale of your Fund.com stock on that occasion?

17 A. It seems that way, yes.

18 MR. TULMAN: I have no further questions.

19 THE COURT: Thank you.

20 Any redirect?

21 MR. COWLEY: Yes, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. COWLEY:

24 Q. All right. Ms. Temkin, good afternoon again.

25 I think you were asked some questions on

E6qdtag5

Temkin - redirect

1 cross-examination about going to a horserace, I think, in July
2 of 2008.

3 A. Yes.

4 Q. Is that correct?

5 And you had testified earlier regarding having some
6 apprehension about being invested in IEAH, is that correct?

7 A. Right?

8 MR. TULMAN: Permission to approach, your Honor?

9 THE COURT: You may. You don't have to ask going
10 forward.

11 MR. COWLEY: Oh. Thank you, your Honor.

12 Q. Let me show you what's been marked for identification as
13 Government's Exhibit 1452B.

14 Do you see that?

15 A. Yes.

16 Q. Does this appear to be an email exchange between you and
17 Mr. Tagliaferri?

18 A. Yes.

19 Q. And is the date of it in June of 2008?

20 A. June 17th, yes.

21 MR. COWLEY: Your Honor, I move to admit Government's
22 Exhibit 1452B.

23 THE COURT: Any objection?

24 MR. TULMAN: No objection.

25 THE COURT: It will be admitted.

E6qdtag5

Temkin - redirect

(Government's Exhibit 1452B received in evidence)

MR. COWLEY: If I could have that back, if you don't mind? Thank you.

If you'll bear with me for a moment, your Honor? I am going to try to get this thing working.

Thank you, Ms. Moyne.

MR. COWLEY: I see it on the monitor down here.

THE CLERK: It is black on my screen.

MR. COWLEY: Here we go. All right.

Q. So looking through here, this is an email exchange between you and Mr. Tagliaferri. This is in June 2008, is that correct?

A. Correct.

Q. So this is before you attended that horserace that Mr. Tulman is asking you about?

A. Yes.

Q. At the bottom Mr. Tagliaferri says the May portfolios are attached, correct?

A. Mm-hmm.

Q. What do you write to him on June 10, 2008?

A. "Portfolios have come through. I still remain apprehensive about having so much money, such a large investment in IEAH. What can I look forward to in the near term and what are the risks?"

Q. OK. So are you expressing apprehension about your

E6qdtag5

Temkin - redirect

1 investment in IEAH prior to going to see a horserace?

2 A. I am.

3 Q. And let's go up. What sort of assurances -- actually, what
4 do you write to him on June 16, 2008?

5 A. June 16th, I write, "Kindly respond to June 10 email. I
6 believe you mentioned answering questions several days ago.
7 Perhaps your email didn't come through."

8 Q. And what assurances does Mr. Tagliaferri give you on
9 June 17th?

10 A. It says, "Just returned to St. Thomas yesterday. Am
11 planning to call to discuss these questions and Victor's.
12 These notes we hold are backed by the racing stable, so we
13 don't have any concern about the ability to repay. However, if
14 we convert, as we have begun to do, then we are subject to
15 risks of the business model. At this point the outlook is
16 quite promising, and with the company planning a London Stock
17 Exchange offering in the fall, we have a liquidity event to
18 reduce the position.

19 "I will call you later to discuss in more detail and
20 answer your questions.

21 "Regards, Jim."

22 Q. OK. So in June 2008, you expressed apprehension about
23 having such a large investment in IEAH, and Mr. Tagliaferri
24 gives you assurances, is that correct?

25 A. Correct.

E6qdtag5

Temkin - redirect

1 Q. Mr. Tulman, I think, showed you some other correspondence
2 also in June 2008, not in evidence, where he directed you to I
3 think a letter your husband may have written about your son
4 being interested in getting in the horse industry. Do you
5 recall that?

6 A. Yes.

7 Q. Does your son's interest in getting in the horse industry
8 have anything to do at all with your comfort level with being
9 invested in IEAH?

10 A. No.

11 Q. I think he spent a lot of time talking with you about this
12 September 2, 2008 agreement that you signed; do you recall
13 that?

14 A. Yes.

15 Q. All right. Let's take a look at that. If we could please,
16 first put up Government's Exhibit 1451.

17 Thank you.

18 All right. I just want to try to unpack and clarify a
19 few things here. OK?

20 So on September 2, 2008, he sent you this letter,
21 correct?

22 A. Correct.

23 Q. All right. If you can just zoom in about the top
24 paragraph, please.

25 A. "Dear Susan, enclosed please find documents and information

E6qdtag5

Temkin - redirect

1 related to your IEAH holdings and your fractional interests in
2 racehorses. As add-ons to your notes, you've received
3 interests in Big Brown, Kip Deville and Shaggy Mane. We formed
4 an LLC, Pegasus Holding Group Stables, LLC, to take title to
5 the horses. This was simply a cumbersome process that requires
6 owners to be licensed in each racing venue and to provide a set
7 of fingerprints.

8 "I became the managing member and each owner client
9 will become a nonmanaging member. The process will be
10 completed when you execute the enclosed documents and return
11 them to us. I have provided a stamped priority mail envelope
12 for your convenience."

13 Q. So he's sending you paperwork to fill out?

14 A. Right.

15 Q. Is that right?

16 When he talks about interest that you received, is he
17 talking about investments from the past tense, or is he talking
18 about you making a new investment on September 2, 2008?

19 A. New investment.

20 Q. Well, now, let's just read a sentence with me if you could.

21 "As add-on to your notes, you received interests in
22 Big Brown, Kip Deville and Shaggy Mane," is that correct?

23 A. Correct. Yes.

24 Q. In fact, what this letter is talking about is investments
25 that Mr. Tagliaferri already put you in in relation to IEAH?

E6qdtag5

Temkin - redirect

1 MR. TULMAN: Objection, your Honor.

2 A. Correct.

3 THE COURT: Yes. Just going forward, please don't
4 lead.

5 MR. COWLEY: Yes, your Honor. Understood.

6 BY MR. COWLEY:

7 Q. In fact, if we could please switch over to this again.
8 Hopefully, it should work.

9 Great. OK.

10 So this is what's been admitted as Government's
11 Exhibit 1451A; do you see that?

12 A. Yes.

13 Q. OK. What are the dates referenced in that first sentence
14 in regard to your acquisition of securities in IEAH?

15 A. March 21, 2007; April 20, 2007; July 13, 2007; and
16 September 18, 2007.

17 MR. COWLEY: And if we could switch back, please, and
18 Ms. Baskin, Government's Exhibit 1000, please, page 16.

19 One-six. Thank you.

20 Q. OK. And looking down at your account statements, what do
21 we see happening on March 22, 2007?

22 A. A disbursement, is that what you are talking about?

23 Q. Correct.

24 A. A cash disbursement paid to Valley National Bank for
25 \$100,000, wired at the request of the client, paid for no one,

E6qdtag5

Temkin - redirect

1 for IEAH."

2 Q. So this is -- to an extent, is this a reference to a March
3 '07 investment into IEAH?

4 A. It is an investment of \$100,000 into IEAH on 3/22/07.

5 Q. Going back again forward to July 2008, when you were
6 expressing excitement about seeing Big Brown, going to this
7 horserace, etc. Did you have any knowledge then as to whether
8 or not Mr. Tagliaferri had a relationship established with IEAH
9 where he would be receiving a portion of client funds that had
10 been sent to IEAH?

11 A. No.

12 MR. TULMAN: Objection.

13 THE COURT: Overruled.

14 Q. If you had known that that was the case, would that have
15 changed your excitement level and comfort level?

16 A. Yes, it would have.

17 Q. And explain to the jury why that would have changed.

18 MR. TULMAN: Objection, your Honor.

19 THE COURT: Overruled.

20 A. Because, again, it gets back to that double-dipping
21 business. If he was getting money from IEAH for putting
22 money -- for a fee and for putting our -- I mean, the
23 investors' money into IEAH, then that's just dirty dealing.
24 Sorry.

25 Q. Now, you were asked a question, a series of questions

E6qdtag5

Temkin - redirect

1 actually, about a totally unrelated investment, White Energy.

2 Do you recall those questions?

3 A. Yes.

4 Q. I think you looked at some account statements from 2005, is
5 that correct?

6 A. Yes.

7 Q. And you looked at a purchase then and a sale later, is that
8 right?

9 A. Yes. Correct.

10 Q. If we could please go to page 76 of this exhibit.

11 JUROR NO. 2: Excuse me. This monitor doesn't work
12 anymore.

13 THE COURT: Thank you for letting us know. Can look
14 on with your neighbor?

15 (Pause)

16 THE CLERK: For now, you can go ahead.

17 THE COURT: Raise your hand if your monitor is not
18 working.

19 Yours is not working either?

20 ALTERNATE JUROR 4: No, it is working, but this is
21 working here.

22 THE COURT: OK.

23 THE CLERK: Judge, do you mind if they switch seats to
24 that monitor?

25 THE COURT: No. Go ahead. Thank you.

E6qdtag5

Temkin - redirect

1 You may proceed.

2 MR. COWLEY: Thank you, your Honor.

3 BY MR. COWLEY:

4 Q. All right. So in looking at your account statements for
5 January of 2008, do you see additional money leaving your
6 account on January 30, 2008?

7 A. \$18,468, yes.

8 Q. That's money leaving your account, correct?

9 A. Yes.

10 Q. And what security is that in relation to?

11 A. White Energy.

12 Q. And if we could see page 57, please.

13 And if we could zoom in on the transaction on
14 October 5th, '07, relating to White Energy.

15 Is that money coming in or leaving your account in
16 respect to White Energy?

17 A. Leaving.

18 (Continued on next page)

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E6qbttag6

Temkin - redirect

1 Q. And most broadly, Ms. Temkin, did you understand White
2 Energy to have anything at all to do with IEAH?

3 A. No. No.

4 Q. You were asked some questions--

5 MR. COWLEY: We can take that down, please.

6 Q. So you were asked some questions about your monthly
7 distributions.

8 Do you recall those questions?

9 A. Yes.

10 Q. And I think you were asked something to the effect of did
11 those-- did the activity in your account ever interfere with
12 your receiving those distributions, is that correct?

13 A. Yes.

14 Q. And what's your recollection as to whether or not it did?

15 A. It didn't.

16 Q. Did the decline in value in your account impact you in
17 other ways?

18 A. Well, sure.

19 Q. Can you explain to the jury how it impacted you?

20 A. Well, it impacted us-- first of all, we're retired and on a
21 fixed income. And it sort of scarred us for things that we
22 wanted to do for our children, our grandchildren, that we can't
23 do. And there's a good chance that we'll probably have to move
24 within the next couple of years because we can't stay where we
25 are.

E6qbttag6

Temkin - redirect

1 MR. COWLEY: If I could have a moment, your Honor.

2 THE COURT: Sure.

3 (Pause)

4 MR. COWLEY: Nothing further.

5 THE COURT: Any recross?

6 MR. TULMAN: Nothing further, your Honor.

7 THE COURT: All right. Thank you very much,

8 Ms. Temkin. You may step down.

9 (Witness excused)

10 THE COURT: Call your next witness, please.

11 MS. MOYNE: The government calls Professor Arthur
12 Laby.

13 ARTHUR LABY,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 THE DEPUTY CLERK: Can you please state and spell your
17 name for the record, sir.

18 THE WITNESS: Arthur Laby, A-R-T-H-U-R L-A-B-Y.

19 MS. MOYNE: May I proceed?

20 THE COURT: You may.

21 DIRECT EXAMINATION

22 BY MS. MOYNE:

23 Q. Good afternoon, Professor Laby.

24 A. Good afternoon.

25 Q. How are you employed?

E6qbttag6

Laby - direct

1 A. I am a professor of law at Rutgers University and a
2 consultant to the securities industry. I also serve on the
3 board of directors of the Certified Financial Planner Board of
4 Standards. It's an industry association.

5 Q. So let's start with as a professor. What do you do as a
6 professor?

7 A. Well, I teach at Rutgers Law School. So that means I have
8 three primary responsibilities: I teach courses; I engage in
9 research and writing; and then I also engage in what we call
10 service, which is service to the law school and service to the
11 broader community.

12 Q. And what sorts of courses do you teach?

13 A. I teach business law courses for the most part. So
14 business organizations or corporations. I teach securities
15 regulation, and I also have taught classes in investment
16 management law and in fiduciary law.

17 Q. And in terms of your research and writing, what is the
18 focus of that?

19 A. It's primarily in the area of the fiduciary obligations of
20 members of the financial services industry, investment advisors
21 and broker-dealers.

22 Q. And in terms of your community work, your outreach, what's
23 the focus of that?

24 A. So some of that is what I already mentioned. The service I
25 do on the Certified Financial Planner Board of Standards.

E6qbttag6

Laby - direct

1 That's a voluntary position and it's an organization that is in
2 the public interest. I also assist with students, students'
3 work at the law school, and a little bit of outreach to the
4 broader area in South Jersey and Philadelphia in the financial
5 services area.

6 Q. And you mentioned you were a consultant. What sort of
7 consulting do you do?

8 A. So various projects assisting members of the financial
9 services industry with compliance, with the laws and
10 regulations.

11 Q. Okay. And does that include investment advisors?

12 A. It is primarily investment advisors, yes.

13 Q. And you mentioned that you sit on the Board of the
14 Certified Financial Planners. What is a certified financial
15 planner?

16 A. So the certified financial planners are CFPs. That's a
17 designation that we offer to members of the industry. So
18 broker-dealers, investment advisors, those who provide
19 investment advice. And if they want to be a certified
20 financial planner, it's a particular qualification, they have
21 to go through a series of coursework and then they sit for an
22 examination.

23 Once they pass that examination, if they also have had
24 significant work experience, they can be considered a so-called
25 CFP and they can put those initials after their name. I think

E6qbttag6

Laby - direct

1 there are now close to 70,000 CFPs in the United States.

2 Q. Okay. Now, if we could step back for a moment. Could you
3 provide the jury with your educational background?

4 A. Oh, sure. I went to college at the University of
5 Pittsburgh and then went to law school at Boston University
6 School of Law.

7 Q. Okay. And what did you study in law school?

8 A. Law school's a broad-based legal background. By the time I
9 was finish not guilty my third year, I was focused a bit more
10 on business-related classes because I had a sense that that's
11 how I would spend most of my career.

12 Q. And then what did you do after law school?

13 A. Well, I first clerked for a federal district court judge in
14 the District of Maryland, and then I practiced at a law firm in
15 Washington, D.C. doing primarily financial services regulation.

16 Q. Okay. And I don't know if you mentioned this. What year
17 did you graduate law school?

18 A. I graduated in 1989 from law school.

19 Q. Okay. And when you were at the law firm, you said that you
20 were in financial services.

21 What sorts of cases did you work on or clients did you
22 have?

23 A. So when I started at the firm, I did a lot of banking work.
24 And then I slowly moved over into the securities area and spent
25 most of my time in my last couple of years at that firm doing

E6qbttag6

Laby - direct

1 work on behalf of investment advisors and broker-dealers.

2 Q. And what did you do after you were working at the firm?

3 A. So after the firm I spent two years overseas on a Fulbright
4 grant teaching and researching at two German universities, also
5 focused on the business law areas.

6 Q. And approximately when was that?

7 A. Let's see. That was from 1994 to 1996.

8 Q. And after you returned from your Fulbright, what did you
9 do?

10 A. When I returned from the Fulbright, I joined the staff of
11 the U.S. Securities and Exchange Commission in Washington, D.C.
12 And I spent, I would say, just under ten years at the SEC
13 working in three different offices.

14 Q. Okay. First, if you could explain what the SEC, the
15 Securities and Exchange Commission, is.

16 A. Sure. The SEC, the Securities and Exchange Commission, is
17 the primary federal regulatory agency that regulates the
18 issuance of securities in the United States and then also
19 regulates members of the financial services industry like
20 stockbrokers, investment advisors, and mutual funds.

21 Q. And you mentioned that you were in three different areas in
22 the SEC. So what were your roles at the SEC?

23 A. Yes.

24 Q. Approximately what date, time frame, are we talking about?

25 A. So I came back from Germany in 1996, joined the SEC staff.

E6qbttag6

Laby - direct

1 And I worked first in the office of international affairs.
2 That was particularly fit because I had spent some time
3 overseas. And then I moved into the division of investment
4 management. That's the division of the SEC that regulates
5 investment advisors and mutual funds. Spent two to three years
6 in that division. And then I moved to the office of general
7 counsel, which oversees all of the work of the agency and has
8 to essentially look at the work of the staff and advise both
9 the general counsel and the commissioners whether they should
10 proceed with a certain rule or a certain enforcement case,
11 whatever it might be.

12 Q. Okay. And in the office of general counsel, were you
13 involved at all with investment advisors?

14 A. Yes. So I was the assistant general counsel specifically
15 assigned to do work in the investment management area, which of
16 course includes both investment advisors and mutual funds.

17 Q. And did you have any role in drafting any of the
18 regulations or requirements for investment advisors, including
19 any forms that they're required to fill out?

20 A. Yes. So part of the work of the division of investment
21 management-- I should back up and say part of the work at the
22 SEC is to implement all of the federal securities laws. And so
23 by implement, that often means passing rules and regulations
24 under those statutes that then of course apply to members of
25 the financial services industry such as investment advisors.

E6qbttag6

Laby - direct

1 So, yes, in the division of investment management,
2 part of my responsibility was to actually write those rules and
3 the long documents that accompany the rules that go out to the
4 public so they can understand what the SEC is doing.

5 And at the time that I was in the division, we were
6 also working on the Form ADV, which is a form that must be
7 completed by investment advisors that are registered with the
8 SEC.

9 Q. And I'll probably ask you more about that in a little
10 while. For now I'm just going to ask you, what did you do
11 after working at the SEC?

12 A. Well, after the SEC I decided to make the move into
13 academia and that's when I joined Rutgers Law School.

14 Q. And you mentioned some of the subjects that you teach in
15 and publish on.

16 What do you do to keep current with the laws,
17 regulations and practices governing investment advisors?

18 A. Yes. The laws are changing and the regulations are always
19 changing. So that's always a challenge. I do several things.
20 First of all, my work on the CFP board that I mentioned earlier
21 actually helps me stay very current, because we're very
22 involved in the cutting-edge issues of the day that are
23 advising advisors and brokers.

24 I also attend, regularly attend, meetings of the group
25 in the Philadelphia area called Philadelphia Compliance

E6qbttag6

Laby - direct

1 Council. We meet several times a year. It's mainly compliance
2 individuals and we join together and discuss what the big
3 issues are that are facing investment advisory firms and
4 broker-dealer firms with regard to compliance.

5 I also serve on the New York City Bar Association
6 Investment Management Committee. It's a small group of very
7 experienced lawyers in the investment management world. We
8 meet once a month, again to keep current on various issues of
9 the day.

10 I also speak fairly regularly at industry conferences,
11 typically in the New York area. And of course if I speak at
12 the conference, I also attend the conference and I learn a lot
13 about what's happening in the industry based on my attendance
14 at those conferences.

15 Q. And have you published anything specifically on investment
16 advisors?

17 A. Yes. So that's one of my main areas of interest and of
18 research. And several of the book chapters and articles that
19 I've published over the years have been quite specific to the
20 investment advisory area.

21 Q. Have you served as an expert witness before?

22 A. Yes, I have.

23 Q. And approximately how many times?

24 A. I would say probably seven to ten times. I don't know what
25 the exact number is.

E6qbttag6

Laby - direct

1 Q. And on what subjects have you been hired as an expert
2 before?

3 A. Well, typically it's in this area that we're discussing,
4 the obligations of investment advisors, the obligations of
5 broker-dealers. On rarer occasions it's in the general
6 corporate law area.

7 MS. MOYNE: At this time the government offers
8 Professor Laby as an expert witness in investment advisors
9 including the regulations and standards applicable to
10 investment advisors and in fundamental concepts of securities
11 as they relate to the work of investment advisors.

12 THE COURT: Any objection?

13 MR. TULMAN: No objection, your Honor.

14 THE COURT: All right. He's so qualified.

15 Q. Professor Laby, do you charge when you serve as an expert
16 witness?

17 A. I do.

18 Q. And how much do you charge?

19 A. A rate of \$600 per hour.

20 Q. And I'm just going to ask you, there's a microphone, just
21 to speak into it because it's hard to hear you unless you're
22 actually into it even though it may, to you, sound like you're
23 shouting.

24 Are you being paid by the government today?

25 A. I am being paid, yes.

E6qbttag6

Laby - direct

1 Q. And does your compensation depend on the outcome of this
2 case?

3 A. Not at all.

4 Q. Has the government asked you to change your opinions that
5 you've previously reached before you were retained to testify
6 in this case?

7 A. No.

8 Q. And have you been retained by the government to give your
9 expert opinion on industry practices?

10 A. Yes, that's correct.

11 Q. And have you been retained by the government to give your
12 opinion on any of the specific conduct that is charged in this
13 case?

14 A. Not specific conduct in this case, no.

15 Q. Professor Laby, in connection with your testimony today,
16 did you prepare some slides? Did you and the government
17 prepare some slides?

18 A. Yes. Yes, we did. Yes.

19 MS. MOYNE: And at this time the government moves
20 Government Exhibit 4000 into evidence.

21 THE COURT: Any objection?

22 MR. TULMAN: No objection.

23 THE COURT: It will be admitted.

24 (Government's Exhibit 4000 received)

25 Q. So, Professor Laby, first we're going to start with general

E6qbttag6

Laby - direct

1 concepts of investment. What sort of investments are there?

2 A. Well, there are many types of investments. The most common
3 types that many people have heard of are stocks, bonds, and
4 mutual funds. I would say those are the three most common.

5 Q. Okay. So what is a stock?

6 A. So a stock is-- it's actually evidence of just a little bit
7 of ownership in a particular company. So an investor actually
8 gives money over to a company by buying stock. And as a result
9 that investor is entitled to dividends if the company decides
10 to pay a dividend, but more importantly they own a share of
11 stock. So they own a share of company which the investor hopes
12 will increase in value over time in which case they could sell
13 it at a profit.

14 Q. So the company gets the investor's money and the investor
15 gets the stock?

16 A. That's right.

17 Q. And is the company required to pay the stockholder back at
18 any specific time?

19 A. No, that's not the deal with stock. It's really just a
20 little bit of ownership that that individual has in the company
21 itself. There's no requirement for the company to pay anything
22 back.

23 Q. And what is a bond?

24 A. A bond is actually a loan. So it's when an investor
25 decides to actually lend money to a company and they give that

E6qbttag6

Laby - direct

1 money over as a loan and then they are paid back that money at
2 a certain point in time, both interest and principal.

3 Q. So for a loan, is the company required to pay back the
4 loan?

5 A. Yes, that's a different kind of a bargain and the company
6 has to pay back the investor.

7 Q. And, briefly, what is a mutual fund?

8 A. A mutual fund is a type of investment company. And when I
9 say "investment company," it's really a company that goes out
10 and invests in other companies. So it's a way for investors to
11 pool their money together into one common pool, one fund, and
12 then that fund goes out and invests in a lot of other
13 companies, hopefully which do well over time.

14 Q. All right. Are you familiar with the term "promissory
15 note"?

16 A. Yes.

17 Q. And what is a promissory note?

18 MS. MOYNE: And maybe if we could ask, Ms. Baskin, if
19 you could put on the first slide. Thank you.

20 A. Yes. So a promissory note just refers to a contract. It's
21 an actual document, a piece of paper, that the company hands
22 over to the investor when the investor decides to invest in
23 that company.

24 So you can see from this picture the investor loans
25 money to the company, the company has promised to pay interest

E6qbttag6

Laby - direct

1 and principal back to the investor. But the investor has in
2 his or her hand a piece of paper, a document, a promissory
3 note, which is essentially an IOU from the company to the
4 investor where the company promises to make payments over
5 time.

6 Q. So does the company have an obligation to pay back the
7 money to the investor with a promissory note?

8 A. Yes, the company does have that obligation and the
9 promissory note is evidence of that if needed.

10 Q. Okay. And when is the payback date?

11 A. The payback date depends on the bargain struck between the
12 investor and the company. It can be one to two years out; it
13 can be 10 to 15 years out. It varies actually.

14 MS. MOYNE: And if Ms. Baskin can put on the second
15 slide, please.

16 Q. What is this? What does this appear to be?

17 A. So this appears to be just the first page of the promissory
18 note. And as you can tell, these are often complex legal
19 documents, but here you can see just by looking at the top that
20 it's a promissory note. The rate of interest on this appears
21 to be 6 percent. You can see that it's due on June 10th, 2008.
22 The amount is there, highlighted on the lower left, \$1,500,000.
23 And the date that it was issued appears to be June 11th, 2007.

24 Q. And you mentioned 6 percent interest. What is interest?

25 A. So interest is essentially the extra money that the company

E6qbttag6

Laby - direct

1 agrees to pay to the investor above and beyond the principal
2 amount. So not only does the investor receive the principal
3 amount back, the amount they loaned, but they receive that
4 amount plus interest, plus 6 percent of that amount, per year.

5 Q. And is all of that information typically laid out in a
6 promissory note: The due date, the amounts, the interest?

7 A. Absolutely. The promissory note lays out all of the rights
8 and responsibilities of the parties, of both the investor and
9 the company.

10 Q. Okay. And if you look on the top part that's blown up, it
11 mentions a converted secured convertible note.

12 A. Yes.

13 Q. What is a convertible note?

14 A. Yes. So a convertible note means that-- earlier I
15 mentioned-- we talked about both stock and debt. In the case
16 of a convertible note, this is a bond, this is a loan, but this
17 can be converted, essentially, into equity. So it's a bit of a
18 more complicated transaction. Although the transaction starts
19 as a loan, it's at least possible at some point down the road
20 where the parties can decide to change the terms so that
21 instead of this being a loan, this converts into stock or into
22 equity or into an actual ownership in the company.

23 Q. And are you familiar with the terms -- I think you've
24 mentioned them -- "equity" and "debt"? And if you could
25 explain what the difference is between equity and debt.

E6qbttag6

Laby - direct

1 A. Sure. So "equity" is just another phrase for stock. It
2 essentially means the same thing. We might think of equity we
3 have in our home. But in the context of a company, equity is
4 essentially some little bit of ownership which is akin to
5 stock. So stock and equity are essentially the same.

6 And then debt is essentially the same as a loan. So
7 debt is what the company owes to an investor when the investor
8 loans money to the company.

9 MS. MOYNE: All right. And if we could look at the
10 next slide, Ms. Baskin.

11 Q. What does this depict?

12 A. I think this is particularly helpful to explain the
13 relationship between equity and debt. So here you see on this
14 triangle, the debt holders are on the top part of the triangle.
15 And what that means is they have to be paid first by the
16 company. So the company has to make these payments. And
17 you'll notice on the left-hand side there's an arrow "payment
18 priority" going down.

19 Once the company has paid back the debt holders and
20 has paid back all of the other individuals or companies they
21 have to pay, like their employees and their utility bills and
22 everything else a company has to pay, whatever is essentially
23 left over at the end of the day, that's what falls down to the
24 stockholders who are on the bottom.

25 So I often say to students that the stockholders are

E6qbttag6

Laby - direct

1 the residual owners of the firm. They essentially get
2 whatever's left over at the end of the day after the debt
3 holders and others have been paid.

4 Q. So what is the advantage of buying an equity or a stock
5 over making a loan?

6 A. Yes. So the advantage of equity is that there can be a
7 very, very great upside. So if the company is very profitable,
8 if it makes a lot of money, what does that mean? That means it
9 can pay its debt holder, it can pay its employees, it can pay
10 its utility bills, and there's a lot of money left over at the
11 ends of the day for stockholders and we see the value of the
12 stock increasing. That's the advantage.

13 Of course, by contrast, if the company doesn't do
14 well, the stock price might well go down.

15 Q. And what is the advantage of making a loan?

16 A. So the advantage of the loan is it's a sure thing. With
17 the debt holders, there's a promise to pay a given rate of
18 interest over a given period of time and then they absolutely
19 will get their money back. So there's not this chance that
20 they might do well or they might not do well. It's a
21 guaranteed payment that the debt holders are meant to receive.

22 Q. And are you familiar with the term "security," a security?

23 A. Yes.

24 Q. What is that? What do people mean by the term "security"?

25 A. So a security is really a financial instrument like the

E6qbttag6

Laby - direct

1 kinds we've been talking about: Stock, bonds, mutual funds.
2 These are all considered securities although there are many
3 others besides those three.

4 Q. So a stock is a security?

5 A. Yes, absolutely.

6 Q. Is a promissory note a security?

7 A. Yes, it is.

8 MS. MOYNE: We can actually turn off the slides for
9 now. Thank you.

10 Q. I want to ask you some questions about selling assets.

11 First, can an investor sell stock that he or she
12 owns?

13 A. Yes. Typically an investor can sell stock that he or she
14 owns, and that happens on a fairly regular basis. Sometimes
15 it's not so easy to sell that stock, depending on what it is,
16 but generally speaking, yes, a stock can be sold.

17 Q. And where does an investor go to sell stock?

18 A. So typically an investor will contact his or her financial
19 advisor and indicate that they want to sell their shares. And
20 then that advisor goes out to a broker, stockbroker, to
21 actually execute the trade.

22 Q. And what sorts of markets are there to sell the stocks on?

23 A. Well, the most common types of markets that we think about
24 are the exchanges, the securities exchanges, like the New York
25 Stock Exchange and the NASDAQ. So if somebody wants to sell

E6qbttag6

Laby - direct

1 the security of a large company, like IBM or Apple, they would
2 sell those shares by having a broker go out to the exchange and
3 finding a buyer.

4 Q. And are there any requirements to have stocks sold on one
5 of those exchanges?

6 A. Oh, yes. If a company wants to have its shares listed on
7 something like the New York Stock Exchange, which is very
8 famous, that company has to meet what are called listing
9 standards. So the New York Stock Exchange will have a series
10 of standards that the company has to meet: The company has to
11 be of a certain value; it has to have been in existence for a
12 certain period of time. There are many requirements, many
13 listing requirements.

14 When a company meets those, it can then have its stock
15 listed on the New York Stock Exchange.

16 Q. And are you familiar with the OTC bulletin board?

17 A. Yes.

18 Q. And what is the OTC bulletin board?

19 A. So the OTC bulletin board is a market for certain stocks
20 that really are not able to meet the listing standards for
21 something like the New York Stock Exchange or the NASDAQ, but
22 those companies still might want to have their stocks traded or
23 have a market for them. So they'll list them on this other
24 market called the OTC, over-the-counter, bulletin board.

25 Q. And are you familiar with the pink sheets?

E6qbttag6

Laby - direct

1 A. Yes.

2 Q. And what are the pink sheets?

3 A. So the pink sheets, which is a funny name, but it goes back
4 to the days when certain stocks were actually listed on pink
5 sheets; is yet another place where companies that cannot, as I
6 say, have their stocks listed on one of the more well-known
7 exchanges. They might have them listed on these so-called pink
8 sheets so that investors who are looking for lesser-known
9 companies have a place to go to find those securities and buy
10 and sell them.

11 Q. And are you familiar with the term "penny stock"?

12 A. Yes.

13 Q. And what is a penny stock?

14 A. A penny stock is a stock of a company that is typically
15 rather small, not very well known, and the shares of the stock
16 are quite low in value and have to stay at that low value -- I
17 believe it's less than \$5 per share -- for a prolonged period
18 of time. That stock is called a penny stock.

19 Q. And where are penny stocks traded?

20 A. So, again, those stocks typically would not qualify to
21 trade on the New York Stock Exchange or the NASDAQ so they
22 wouldn't be listed there. They would typically be listed on
23 the others that you've mentioned: The OTC bulletin board or
24 the pink sheets.

25 Q. And, generally speaking, are stocks that are traded on the

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1 major markets, the New York Stock Exchange or the NASDAQ, more
2 or less risky than stocks that are traded on the other markets,
3 the OTC and the pink sheets?

4 A. Well, the stocks on the major exchanges are less risky
5 because there's more what people call transparency. So part of
6 the listing requirements that I mentioned earlier is that those
7 companies have to make a lot of information available to the
8 public about their company in order to be listed on those
9 exchanges. So because that information is available to the
10 public, those stocks tend to be less-- less risky.

11 Q. And what sorts of information is that?

12 A. Oh, it's all sorts of information about the company, its
13 operating history, how it's spending its time, who the chief
14 officers are, what their backgrounds are. I mean, it's
15 detailed information about the companies.

16 Q. And do the OTC and the pink sheets have fewer or more
17 requirements?

18 A. They have far fewer requirements of transparency.

19 Q. Okay. And now turning to loans and promissory notes.
20 We've spoken about how stocks can be sold and bought. Can
21 notes be bought and sold?

22 A. They actually can be. So when you think about it, if you
23 hold a promissory note, the company has essentially agreed to
24 pay you back at some point in the future a certain amount of
25 money with interest. And so that right that the investor has,

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1 that note, that right to receive payments, can essentially be
2 sold and typically is sold on a regular basis to some other
3 investor who's willing to pay money today and then receive that
4 note and that investor then is paid the money in the future.

5 Q. Are there markets set up for notes to be bought and sold in
6 the way that there are for stocks?

7 A. Yes. Yes, there are. There's also markets for debt
8 instruments. Correct.

9 Q. And, Professor Laby, are you familiar with the concept of
10 liquidity and liquid and illiquid stocks?

11 A. Yes.

12 Q. Or assets, I should say.

13 Can you tell the jury about liquidity and liquid and
14 illiquid assets?

15 A. Sure. So liquidity refers to the ease by which a security
16 could be bought and sold. So if we think about large
17 companies -- earlier I mentioned, just for example, IBM and
18 Apple -- we all know those are stocks that can be sold really
19 any minute of the day. At any time if one wants to sell their
20 shares of IBM or Apple, there's somebody out there who's
21 willing to buy it. Those are considered very liquid stocks.
22 There's a ready market all of the time. That's a liquid
23 security.

24 An illiquid security is exactly the opposite. If a
25 company is not very well known, does not have a lot of owners,

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1 is not listed on a major exchange, there might not be on a
2 given day any buyers for that particular company. So if a
3 seller wants to sell, they can't do it right away. Those
4 securities are considered illiquid or nonliquid securities.

5 Q. Are you familiar with the concept of a hard-to-value asset?

6 A. Yes.

7 Q. And what does that mean, have a hard-to-value asset?

8 A. So, again, for some securities, some stocks, like the ones
9 we've been talking about, the major stocks like IBM, Apple, the
10 big companies, there's a price every day listed in the
11 newspaper, listed online. One always knows what the stock is
12 worth.

13 For companies that do not trade very often, there's
14 not going to be a price where you can open up the newspaper and
15 find out what the company is worth. And very often it's
16 actually not so easy to figure out what that particular
17 security is worth. Again, there's not a lot of transparency
18 about those companies in the marketplace. They don't trade
19 very often. So that would be a hard-to-value security.

20 Q. And are you familiar with the expression "a thinly traded
21 asset"?

22 A. Yes.

23 Q. And what does it mean to be thinly traded?

24 A. So to be thinly traded means to be not traded very much at
25 all. So a small company that's maybe owned mainly by the

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1 family members of the company or maybe some friends of those
2 individuals, if it's not traded very often in the marketplace,
3 then it's considered thinly traded.

4 Q. And are you familiar with the concept of parking an asset?

5 A. Yes.

6 Q. And when we're talking about parking an asset, instead of
7 parking a car, could you explain what parking an asset means?

8 A. Yes. It's very different. So parking in the context of
9 assets or stock is when sometimes an individual wants to
10 essentially mask who the true owner is of a given asset at any
11 point in time. And there might be a lot of reasons for that.
12 So individuals can engage in really what are sham transactions
13 or phony transactions, where an asset might come off of the
14 books of one individual and then go right back on at another
15 time. But for a given period it looks as if the individual
16 does not own the particular stocks because they've been
17 "parked" in somebody else's account only to be put back to
18 their true owner at some future time.

19 Q. Okay. And the person who receives the shares for that
20 brief period of time, where the shares are parked, does the
21 parking of an asset affect the appeared value in that person's
22 account?

23 A. Yes, it very well might. So the person who receives the
24 parked securities, it looks as if that person is the owner at a
25 given point in time. But, again, these are typically sham

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1 transactions. So it looks like they're the owner, but they're
2 sort of a secret deal where the securities are going to go back
3 to the true owner at a short time later.

4 Q. Okay. We'll shift gears to your specialty. What is an
5 investment advisor?

6 A. Well, an investment advisor is a person or a company -- it
7 can be a company just as well as a human being -- who is in the
8 business of providing advice about securities, like stocks and
9 bonds, for compensation. Typically they have to be paid for
10 it.

11 Q. And so, first, what sorts of assets? You said stocks and
12 bonds?

13 A. Right. So when I said about securities, that to be an
14 investment advisor under the federal investment advisor law,
15 one has to be advising about securities. And, again, that's a
16 defined term and includes things like stocks, bonds, promissory
17 notes, mutual funds and other types of financial instruments
18 that are considered securities.

19 Q. And are you familiar with the concept of registering a
20 security?

21 A. Yes.

22 Q. What does that mean?

23 A. Yes. So sometimes when companies offer their securities to
24 the public, those securities have to be registered with the
25 Securities and Exchange Commission, which means they have to go

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1 through a rather onerous registration process with the SEC.

2 They go through that process before the securities are sold to
3 the public. And if they do go through the process, those are
4 considered registered securities.

5 Q. In your definition of an investment advisor, does that only
6 apply to people who are providing advice about registered
7 securities or is it a more general category?

8 A. It's more general. As long as the investment advisor is
9 advising about securities, then that individual or firm is
10 considered an investment advisor. It doesn't matter in that
11 context whether the securities are registered or not
12 registered.

13 Q. And what sort of things does an investment advisor do for a
14 client?

15 A. Well, typically an investment advisor does what the name
16 sounds like: They actually provide advice and recommendations
17 to their client about how that client should invest. So they
18 might make recommendations about an investment strategy or they
19 might make particular recommendations about particular stocks
20 and bonds or other investments in which the advisor-- I'm
21 sorry, in which the client should invest and about when that
22 client should buy and sell.

23 So all of those types of things are what an advisor
24 does.

25 Q. Does the investor provide the money for their clients to

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1 invest?

2 A. Yes. So the investor is the one investing their own funds.
3 So, yes, they provide-- they essentially provide the funds.

4 Q. Does the investment advisor-- I misspoke.

5 Does the investment advisor provide any money for the
6 investment?

7 A. No. The advisor-- it's the investor's money that becomes
8 invested. So the advisor doesn't provide any funds. It's the
9 client that provides the funds and then the advisor decides how
10 to invest those funds.

11 Q. And are you familiar with a concept of an investment
12 advisor having discretionary authority?

13 A. Yes.

14 Q. And what does that mean?

15 A. Okay. So an investment advisor can be described as either
16 having discretionary authority or nondiscretionary authority.
17 And discretionary authority means that the investment advisor
18 essentially has what is effectively a kind of power of
19 attorney. They have the authority that the client has given
20 them to invest the client's money without checking in with the
21 client first.

22 So they can decide today I want to invest the client's
23 money in the ABC Company and tomorrow in the XYZ Company. And
24 they can make those decisions and buy and sell securities on
25 the client's behalf without calling the client on the phone,

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1 checking in with them and getting their permission. They have
2 discretionary authority to do that.

3 A nondiscretionary advisor cannot do that. Any time
4 the advisor wants to buy a mutual fund or stock or sell a
5 mutual fund or stock, they have to call the client on the
6 phone, explain what they want to do, make sure they have
7 permission from the client, and then they proceed.

8 Q. And who determines if the investment advisor is going to
9 have discretion or it will be a nondiscretionary advisor?

10 A. That's typically an agreement between the client and the
11 advisor. That's decided beforehand.

12 MS. MOYNE: Your Honor, this would be a good time to
13 break.

14 THE COURT: You think it would be a good time to
15 break.

16 We are going to adjourn for the day now. I'm going to
17 remind you not to talk about the case. And by that I mean you
18 can tell your family members that you were chosen to sit on a
19 criminal case, but beyond that you can't talk about the case at
20 all. Again, don't do any research whatsoever. Don't talk
21 about jury service in any way on social media or otherwise.
22 And just remember to keep an open mind.

23 With that, have a nice evening. We'll start again
24 promptly at ten, so once again I would urge you to come
25 earlier, closer to 9:30. Thank you.

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1 (Jury excused)

2 THE COURT: You may step down. See you in the
3 morning.

4 (Witness temporarily excused)

5 (Continued on next page)

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1 THE COURT: Does anyone have any issues they want to
2 raise?

3 All right. So I'll be here at 9:30 in the morning if
4 you need me, but otherwise we'll start at ten unless the jury
5 is here earlier. Then we'll start earlier.

6 Mr. Tulman.

7 MR. TULMAN: The only thing is in the testimony of the
8 expert, there was some concepts that were being testified to,
9 such as the concept of parking. And I wasn't going to object
10 at this point on relevance because I don't want to highlight
11 it, but I'm mindful of the theory set forth in the indictment.

12 And I just have a concern at this point as to how--
13 what the theories are, additional theories, apart from the
14 theories set forth in the indictment in the case. I'm not
15 seeking any relief at this point right now, but I'm hearing
16 terms now that I'm-- I had made a motion *in limine* that I was
17 denied because I was concerned about going into areas in terms
18 of securities, market manipulation and the like, and the Court
19 held that to be within the purview.

20 I don't know that parking securities and these things
21 are really something that falls within the indictment. And I'm
22 not seeking a ruling right now, but I'm just calling it to the
23 Court's attention that in the future I might start objecting,
24 depending upon where this starts going.

25 THE COURT: Does the government want to be heard?

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1 MR. COWLEY: Sure, your Honor. And I can confer with
2 defense counsel about this. There's evidence that we
3 anticipate will be admitted where the defendant,
4 Mr. Tagliaferri, is having discussions with Jason Galanis
5 regarding parking assets in a particular TAG client account to
6 give the appearance that the account-- or to cover up
7 substantial losses in the account for that month.

8 I can show him the exhibit that I'm referring to and
9 if he wants to be further heard on it, he can. But that's how
10 we plan on sort of-- why we think that definition was relevant.

11 THE COURT: And in your view is that consistent with
12 the theories that are outlined in the indictment?

13 MR. COWLEY: It is, your Honor. One of the things
14 that we allege in the indictment that was shown to the jury
15 today by Mr. Tulman was deceptive means by which the defendant
16 tries to cover up sort of the true nature of how securities are
17 doing. And we would say that's part and parcel.

18 This is a communication between him and Mr. Galanis
19 regarding trying to give the false impression to a particular
20 TAG client. And we're going to hear a lot about how her assets
21 are performing for a particular month in a security that's
22 relating to the Galanises.

23 MR. TULMAN: The indictment as your Honor described it
24 to the jury and as is stated in the indictment involved three
25 different allegations. Those allegations were, one, receiving

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1 fees, nondisclosed fees, and investing not in the best interest
2 of his client; two, trading to raise revenue to pay; and,
3 third, this sub notes issue in connection with NDMA.

4 There may have been e-mails and the like, but this is
5 the first that I'm hearing about this new theory about parking
6 securities. I'm not prepared to really defend that. I don't
7 have an expert. I don't have anything in that area that I ever
8 consulted anybody on that.

9 So that's my concern. I know in the indictment it
10 says "among other things," but then we really may be going into
11 areas which -- I'm not attributing any kind of bad faith at all
12 and I don't mean to suggest otherwise, but we may be going into
13 areas which could operate to just constructively amend the
14 indictment and what we're prepared to meet in this case.

15 MR. COWLEY: Your Honor, our contention would be that
16 it falls within part two or method two of the scheme which is
17 deceptive inner trading involving accounts. I mean, I concede
18 it's not the same as from, like, client one or client two, but
19 it's a transaction where he's talking with the Galanises about
20 moving securities into a particular client's account to give
21 the impression that is untrue.

22 I would suggest we'll show him the specific reference
23 of this conversation. It's as short as, I think, three text
24 message snippets that we're going to introduce. That's it.
25 That's the extent of our evidence on it. We think it falls

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1 within the contour of the indictment. It deals with a victim
2 we're going to hear a lot about, and it deals with
3 communications between Mr. Tagliaferri and Mr. Galanis that
4 we're going to hear a lot about as well.

5 So We'll give him that and be happy to be heard on it
6 further.

7 MR. TULMAN: It just may well be 404. Even though it
8 involves the same people, it may be other crimes evidence that,
9 my understanding, was the government had indicated that there
10 was no such evidence. And I think this may be falling within
11 that category. We'll leave it at that and --

12 THE COURT: We can leave it at that. Just build in
13 some time if you can for us to deal with this.

14 So when do you anticipate this evidence coming in?
15 Aside from the testimony about the definition, and I don't
16 believe that's been harmful at all.

17 MR. COWLEY: Not tomorrow, certainly.

18 THE COURT: Okay.

19 MR. COWLEY: We can push it off a few days if that's
20 something the Court requests.

21 THE COURT: Well, not necessarily. You're going to
22 look at the documents. Why don't you let me know if you have
23 an objection and what it is and we'll just try and deal with it
24 before the witness is on.

25 MR. COWLEY: And I'll certainly give the Court and

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1 Mr. Tulman a heads up before we're going to seek to admit it so
2 everybody knows that it's coming up.

3 THE COURT: All right. Thanks. Have a nice night.

4 (Trial adjourned to June 27, 2014, at 9:45 a.m.)
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